

CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE
Minutes of the January 21, 2015 Meeting

1. Roll Call.

Alan Gordon for State Treasurer John Chiang chaired the meeting of the Tax Credit Allocation Committee (TCAC). Mr. Gordon called the meeting to order at 11:45 a.m. Also present: Lynn Paquin for State Controller Betty Yee; Eraina Ortega for the Department of Finance Director Michael Cohen; and California Housing Finance Agency (CalHFA) Executive Director Tia Boatman-Patterson.

Department of Housing and Community Development (HCD) Director Claudia Cappio and City Representative Lucas Frerichs were absent.

2. Discussion and consideration of a resolution appointing Mark Stivers as the Executive Director of the California Tax Credit Allocation Committee.

MOTION: Ms. Ortega moved approval of the resolution. Ms. Paquin seconded and the motion passed unanimously by a roll call vote.

3. Approval of the minutes of the December 10, 2014 Committee meeting.

MOTION: Ms. Ortega moved to adopt the minutes of the December 10, 2014 meeting. Ms. Paquin seconded the motion. She stated that she would abstain from voting because Betty Yee was not yet appointed State Controller when the December meeting took place. Ms. Ortega and Mr. Gordon voted in favor of the motion. The motion passed by a roll call vote.

4. Executive Director's Report.

Executive Director, Mark Stivers reported that there was a regulation change package on that day's agenda. He noted that the proposed changes were fairly noncontroversial. He reported that staff would hold listening sessions around the state beginning next week for those involved in the tax credit program. Mr. Stivers predicted the sessions would conclude in mid-March. Upon conclusion of the listening sessions staff would gather the feedback they received and use the information to create an informal draft of possible changes for the 4% and 9% tax credit programs.

Mr. Stivers stated that TCAC may convene a task force to vet the initial ideas with the stakeholder community in an effort to create a regulation package for the Committee to consider for adoption in the late fall or winter. He noted that the regulation package may be rather large compared to what staff has seen in the past.

Mr. Stivers stated that he would like increase TCAC's business with regard to 4% credits. He reported that he attended a conference in Washington, D.C. with various tax credit committee directors from around the country. He noted that

New York was the only state that had increased its 4% production recently. Mr. Stivers suggested that the projects in the state of New York received a lot of gap financing in addition to tax credits. He advised the Committee that he and staff would review the TCAC program and determine if changes could be made to help facilitate more affordable housing production.

Mr. Stivers announced that the TCAC Application Workshops would be held during the first week of February in 5 cities throughout the state. And the First Round 2015 applications were due in early March.

Mr. Stivers reported that the Committee had several discussions about the high cost of housing projects and ultimately adopted regulations, which specified that if new applicants had more than 130% of the standard cost for projects of the same type and size, TCAC would not recommend them for funding. Mr. Stivers reported that to date no new applicants had come in with cost estimates above the threshold; however staff found that a number of applicants exceeded the 130% threshold later in the application process.

Mr. Stivers explained that TCAC had one benchmark to judge new projects against. Each year staff updated the benchmarks to account for changes in costs. At the back end projects were held to a standard that was adopted 2 years earlier even though staff knew costs had increased in the interim. Mr. Stivers stated that Development Section Chief, Anthony Zeto reviewed some of the back end costs applied to more recent cost standards and found that some projects still exceeded the 130% threshold.

Mr. Stivers stated that the Committee heard comments at the last meeting, which indicated that construction costs were increasing and developers were having difficulty finding contractors. He stated that it was hard to determine how much of these issues could be attributed to market factors and other factors. Mr. Stivers reported that staff sent letters to 5 applicants who reported costs above the 130% threshold. He noted that that staff may ask the applicants to appear before the Committee to provide an explanation. Mr. Stivers advised the Committee that staff was aware of a few more applicants who may be in the same situation.

Mr. Stivers suggested that the Committee may wish to consider inviting the applicants with reported costs above the 130% threshold, based on the 2015 standard to appear before the Committee. He stated that the Committee could discuss his suggestion further at a later date.

5. Discussion and consideration of the 2015 Applications for Reservation of Federal Four Percent (4%) Low Income Housing Tax Credits (LIHTCs) for Tax-Exempt Bond Financed Projects.

Mr. Zeto stated that the 2 projects on the Agenda were reviewed for compliance with federal and state regulations. He recommended them to the Committee for approval for 4% credits.

MOTION: Ms. Ortega moved to adopt staff recommendations. Ms. Paquin seconded and the motion passed unanimously by a roll call vote.

6. Discussion and consideration of a resolution to adopt proposed regulations, Title 4 of the California Code of Regulations, Sections 10315(b) through 10327(g), revising allocation and other procedures.

Mr. Stivers noted that the Committee members received a summary of the changes in their meeting binders and offered to answer any questions.

Mr. Stivers stated that one of the highlights of the proposed regulations included clarification of the energy efficiency standards used in the 2014 Second Round. He stated that TCAC would continue to use the revised standards for the foreseeable future.

Mr. Stivers stated that the proposed regulations allowed one alternative to the efficiency standards. He reported that applicants could now base their energy usage on the zero net energy standard. He explained that this standard was probably more useful in coastal areas where applicants had difficulty reducing energy usage because their projects did not use a lot of energy to begin with.

Mr. Stivers stated that the proposed regulations also allowed a somewhat larger group of projects to use the utility allowance calculator. He explained that the amount paid by a tenant included a rent component and a utility component. Tenants paid less in utilities when they lived in projects that were very energy efficient. Mr. Stivers stated that applicants would be able to use the utility calculator to rebalance the rent and utility portion for their projects.

Mr. Stivers stated that when applicants used the utility allowance calculator, TCAC required them to be reviewed by an outside energy expert. TCAC had been paying for the reviews from its own budget; however as usage of the utility calculator expands, TCAC would have to consider charging a fee to cover the cost of the reviews. Mr. Stivers reported that legal counsel reviewed the regulations and advised staff that TCAC may charge a fee to cover its costs. Counsel also advised staff that the regulations should be revised to state that TCAC "shall" charge a fee. Mr. Stivers asked the Committee to include counsel's suggested change in their motion.

Mr. Stivers stated the Veteran's Homeless and Housing Prevention Program, Prop 41, was included within the TCAC homeless program priority in the non-profit set aside. He explained that he and staff wanted to ensure TCAC was aligned with the new Prop 41 program.

Mr. Gordon asked Mr. Stivers to identify the regulation section that legal counsel suggested changing.

Mr. Stivers identified Section 10322(h)(21). He stated that the section was identified by bullet #10 in the summary of regulations.

MOTION: Ms. Paquin moved to adopt staff recommendations including the change to Section 10322(h)(21) Mr. Stivers requested. Ms. Ortega seconded and the motion passed unanimously by a roll call vote.

7. Discussion and consideration of a resolution authorizing the Executive Director to execute a fourth amendment to the interagency agreement with the California State Controller's Office for an additional amount up to \$150,000 and extension to December 31, 2015 for audit review services.

Mr. Stivers explained that Deputy Director, Lisa Vergolini would have presented Agenda Item 7; however she was absent that week due to loss in her family. He reminded the Committee that the southern California developer, ADI, was in the process of receivership and the receiver believed ADI was involved in massive criminal fraud. He explained that TCAC had an outside auditor review the pending projects submitted by ADI. TCAC also hired the State Controller's Office (SCO) to perform another audit to determine which project costs were legitimate.

Mr. Stivers reported that each of the ADI projects was currently operating as an affordable housing development. The properties were under new ownership and previous owners were no longer involved. He stated that the new owners were performing as promised and the investors contributed the cash they previously committed. Mr. Stivers explained that SCO would establish an eligible basis on which TCAC would base the amount of tax credits. The proposed contract amendment would allow TCAC to pay SCO for their work. He noted that the work has become more expensive over time and SCO has been very thorough.

Mr. Stivers stated that the proposed amendment would add time and money to the contract bringing the total amount to \$500,000. He noted that TCAC had a prior contract with SCO in the amount of \$78,000 and so the overall cost of reviewing the ADI projects was approaching \$600,000. He stated that he hoped the proposed amendment would provide enough time and money to cover the remaining work. He reported that staff was awaiting 3 letters that would provide the eligible basis information needed to determine the final tax credit awards.

Ms. Boatman-Patterson asked if ADI had other projects in the TCAC portfolio that were not included in the audits. She asked if staff reviewed any of those projects.

Mr. Zeto stated that TCAC reviewed only the pending ADI projects.

Mr. Stivers stated that ADI had a significant number of projects in the TCAC portfolio.

Ms. Boatman-Patterson asked if the previously funded ADI projects were audited every 3 years.

Mr. Zeto confirmed that the projects were monitored by TCAC every 3 years.

Mr. Stivers clarified that every 3 years TCAC monitored projects to ensure tenant incomes and rents were at the required levels and the projects were in good physical condition. He explained that staff reviewed project costs at placed in service in order to determine the final tax credit award. Staff did not review the costs again after the final awards were made; however the Internal Revenue Service (IRS) had the ability to recapture credits.

Mr. Stivers stated that the issues experienced by ADI seemed to arise from a divorce situation, which began at a certain point in time. He reiterated that the IRS had the ability to recapture credits. He stated that there was no indictment underway and the situation was still under investigation.

Mr. Gordon stated that the ADI situation arose several years ago. He stated that ADI was a major developer that became involved in massive fraud as Mr. Stivers mentioned. The State Treasurer's Office (STO) and SCO tried to determine if the situation was the result of a systemic problem with TCAC or one-off situation. Mr. Gordon stated that SCO recruited a team of auditors to conduct a thorough review. The auditors reviewed the bills submitted and determined that the ADI issues were not the result of a systematic problem.

Mr. Gordon stated that there was uncertainty as to whether the pending ADI projects should be allowed to go forward. He explained that a significant number of tenants would have been adversely affected if the projects did not continue. Therefore, the projects were not discontinued; however the agencies did investigate and unravel the ADI issues. Gordon reported that the individuals who committed the fraudulent activity were removed and auditors determined which bills should be paid.

Mr. Gordon commented that the SCO staff deserved much credit for their efforts in rooting out a significant amount of fraud. And he believed the issues were resolved and the program could now move forward.

MOTION: Ms. Ortega moved to adopt staff recommendations. Ms. Paquin seconded and the motion passed unanimously by a roll call vote.

8. Discussion and consideration of a Resolution authorizing the Executive Director of the California Tax Credit Allocation Committee to enter into a contract with Boston Capital, not to exceed \$400,000, per year for a period of two years to provide professional asset management services related to compliance with TCAP and Section 1602 program requirements for projects awarded funds made available by the American Recovery and Reinvestment Act of 2009.

Mr. Gordon asked TCAC staff to explain the acronym TCAP.

Mr. Zeto stated that TCAP stood for Tax Credit Assistance Program.

Mr. Stivers reminded the Committee that this item was previously on the December meeting Agenda. The item was held over for a month so that staff

could determine if CalHFA would bid on the contract. Mr. Stivers reported that CalHFA was interested in working with TCAC in the future; however the agency did not have sufficient staff to perform the work immediately. He stated that TCAC was seeking approval to procure services from its existing contractor Boston Capital.

Ms. Boatman-Patterson stated that CalHFA had a portfolio of projects that it monitored annually as the lender in first position. The agency also had a monitoring section that reviewed tenant occupancy and ensured rent levels were appropriate. Ms. Boatman-Patterson stated that HCD had an asset management section that monitored similar items. In addition, TCAC had an asset management section. She explained that there were four places in the State that had a portfolio of projects, many of which overlapped. Ms. Boatman-Patterson explained that governor had reorganized HCD and CalHFA in order to find efficiencies in program delivery. She stated that HCD and CalHFA were working together to coordinate their services toward deliverables such as the asset management services. In doing so they would have an opportunity to work with STO as well.

Ms. Boatman-Patterson commented that it was a very exciting time for affordable housing in California with the Treasurer committed to housing, the governor seeking more efficiencies, and CalHFA receiving new tools to finance affordable housing. She stated that in the back drop of the current year HCD was taking on the State wide housing plan. In addition, the housing agencies would come together in a forum to determine how delivery of housing services could be more efficient.

Mr. Stivers stated that TCAC has collaborated with its sister agencies in project monitoring. He stated that Rose Guerrero, Compliance Section Chief for TCAC, could answer any questions the Committee had about compliance monitoring.

Ms. Boatman-Patterson commented that working with TCAC staff had been a wonderful experience. She stated that it was wonderful to partner with TCAC on the affordable housing cost study and numerous other occasions. She thanked staff for providing an opportunity for further collaboration.

MOTION: Ms. Ortega moved to adopt staff recommendations. Ms. Paquin seconded and the motion passed unanimously by a roll call vote.

9. Public Comments.

Pat Sabelhaus congratulated Mr. Gordon for taking on the responsibility of chairing the Committee. He also congratulated the Controller's appointee and Mr. Stivers whom the California Council of Affordable Housing (CCAH) had worked with for many years. He noted that in the past year, Mr. Stivers salvaged a significant number of projects with the PILOT legislation with regard to continuing the property tax exemption for numerous affordable projects that could have lost it. He stated that he looked forward to Mr. Stivers' first hearing with the CCAH board and members on January 28th.

William Leach, from 1410 Partners, commended the Treasurer for his focus on affordable housing production in the coming years. He stated that the Committee had a great opportunity to increase the supply of affordable housing through thoughtful changes to the 9% program. He stated that he had a basic idea that could assist in this effort.

Mr. Leach explained that the premise of his idea was to incentivize applicants to develop efficiently. There were hundreds of decisions developers made throughout the planning and production process for affordable housing. The developer determined how many units to provide at the property, which features to provide tenants, and which investment partners to select. In addition, developers decided whether they should sandbag expenses in order to have more cash flow at the end of the day. Mr. Leach stated that when developers approached the cost certification stage they had to decide if they should use leftover funds to provide additional features at their project or return the funds to the State.

Mr. Leach suggested that if the affordable housing community and TCAC members wished to influence developer decisions they should incentivize two main aspects. First, they should determine the amount of credits requested in the application in comparison to the amount of public benefit the requestor provided. Second, the Committee could incentivize the unused credits returned by applicants. Mr. Leach stated that if the Committee challenged savvy and experienced developers to accomplish more with less, and rewarded them for doing so, the Committee would be surprised at the difference in production. He welcomed the new TCAC director and Committee members and thanked them for their time.

10. Adjournment

The meeting adjourned at 12:12 p.m.