

California Debt Limit Allocation Committee (CDLAC)

Jesse Unruh Building
915 Capitol Mall, Room 587
Sacramento, CA 95814

September 26, 2012 – Meeting Minutes

1. Call to Order and Roll Call

Bettina Redway, Chairperson, called the California Debt Limit Allocation Committee meeting to order at 11:02 a.m.

Members present were Alan Gordon for State Controller John Chiang, Jennifer Rockwell for Governor Edmund G. Brown, Jr., and Bettina Redway for State Treasurer Bill Lockyer.

Advisory Members present were Laura Whittal-Scherfee for HCD and Claudia Cappio for CALHFA.

2. Approval of the Minutes of the July 18, 2012 Meeting

There were no comments or questions. Alan Gordon moved for approval the meeting minutes for the July 18, 2012, meeting. Jennifer Rockwell seconded the motion. The Approval of the July 18, 2012 meeting minutes passed unanimously.

3. Executive Director's Report

Sean Spear began his report referencing the 2013 meeting calendar. Mr. Spear explained there would not be a January 2013 allocation meeting, although CDLAC staff is proposing to extend the application deadline for the December 12th meeting to October 26th. This would accommodate some of the projects that may have initially thought to use a January allocation round. Preliminary indications from applicants say the two-week delay in the deadline will be sufficient to submit their applications and move forward in a timely matter.

Mr. Spear went on to explain the current year status report for allocation. There remains a large amount of unused allocation expected at the end of this year. CDLAC will send out surveys to the largest issuers to determine the amounts of current carry-forward allocation they will be willing to accept. In addition, staff will survey issuers to help determine the amounts of allocation we will initially distribute amongst the program pools for 2013. Staff will present recommendations for the 2012 carry-forward on the December meeting and distribution of the 2013 allocation at the January meeting.

The State Auditor's Office released a report on their examination of the Statewide Bond Issuers. The State Auditor concluded that there were certain organizational structure issues that merited further examination and possible clarifying legislation from the State Legislature. However, the State Auditor did not express any issues related to each agency's bond issuance activities or their work with CDLAC. Based on this report, staff is not recommending any changes to the acceptance or approval of applications from these agencies at this time. Staff will continue to monitor for follow-up action from the State Legislature, if any, and stand prepared to present appropriate recommendations for regulatory or approval condition changes if needed.

Mr. Spear reported staff is exploring the possibility of creating a seventh Program Pool for the usage of Mortgage Credit Certificates or Mortgage Revenue Bonds for Qualifying Home Improvement or Home Rehabilitation Loans. Staff has learned there is a seldom-used provision in the Internal Revenue Code that permits the use of allocation in support of single-family home improvement lending. Expansion of the CDLAC program to allow for these loans may help low and moderate-income homeowners to access Energy Efficiency and other rehabilitation loan programs. CDLAC has consulted with several localities and existing program sponsors, and held a Stakeholders Meeting. Currently staff is developing a framework for an allocation program, which staff will

present at the next Stakeholders Meeting. After, we expect to bring a set of draft emergency regulations for the Committee's consideration at the December meeting.

- Alan Gordon asked for an explanation of how the program would work.
- Sean Spear explained there are two single-family program pools. The first program is for first-time home buyers using mortgage revenue bonds to actually put out first-position mortgages or using mortgage credit certificates, which is essentially an individual tax credit for qualified households. With the Mortgage Credit Certificate, the homebuyer is able to take, on a dollar-for-dollar basis, a tax offset for their interest payments on a first-position mortgage.

Two definitions in the Internal Revenue Code make mortgage revenue bonds or mortgage credit certificates available. Home improvement loans, up to \$15,000 in value, and Qualified Rehabilitation Loans.

The programs are through the issuers. They could be either through the localities that have rehabilitation loan programs for low to moderate income families, or for issuers acting as essentially a conduit for the credit or the mortgage revenue bonds for a set of lenders who may be administering a loan program.

There were no further questions or comments.

4. Consideration and Approval of Issuance Date Extensions and Penalty Waivers for Various Apartment Projects

Richard Fischer reported nine (9) projects requested Waiver of the Forfeiture of Performance Deposits and/or negative points: Fickett Tower Apartments (12-005), Taylor Yard Apartments (11-127), Cherry Orchards Apartments (12-002), Oakridge Apartments (11-050), Harvest Park Apartments (12-032), Ramona Park Apartments (11-137), Oak Center Apartments (12-012), Gridley Springs Apartments (12-036), and Lugonia Avenue Apartments (12-037). In addition there were three (3) projects requesting date extensions: Madera Apartments (12-051), Westlake Christian Terrace Apartments (12-049), and High Place East Apartments (12-055).

Mr. Fischer reported that two (2) of the Waiver requests and one (1) of the date extension requests (Harvest Park Apartments, Ramona Park Apartments, and High Place East Apartments) each involve a delay in the County Assessor's tax increment pay-in of the DOF-approved RDA Loans. These do not result from any issues regarding the validity of the RDA commitments to the projects themselves. Second, two of the waiver requests (Gridley Springs and Lugonia Avenue Apartments) involve projects who were forced to revert their awarded allocations, but are also requesting new allocation to allow them sufficient additional time to still proceed with the projects.

Staff recommended the approval of the Waivers of the Forfeiture of Performance Deposits, Waivers of Negative points and Issuance Extensions.

Bettina Redway asked if there were questions or comments.

- Gary Collett, owner of the Fickett Tower Apartments came forward to explain the project's construction is 90% complete. He went on to say he was here if the Committee had any questions regarding his Waiver request.

There were no further questions or comments.

Alan Gordon moved for Approval. Jennifer Rockwell seconded the motion. The Motion to Approve Date Extensions and Penalty Waivers passed unanimously.

| | | |
|--------|----------------------------|---------------------|
| 12-005 | Fickett Towers Apartments | Waiver of Penalties |
| 11-127 | Taylor Yard Apartments | Waiver of Penalties |
| 12-002 | Cherry Orchards Apartments | Waiver of Penalties |
| 11-050 | Oakridge Apartments | Waiver of Penalties |

| | | |
|--------|---------------------------------------|---------------------|
| 12-032 | Harvest Park Apartments | Waiver of Penalties |
| 11-137 | Ramona Park Apartments | Waiver of Penalties |
| 12-012 | Oak Center Apartments | Waiver of Penalties |
| 12-036 | Gridley Springs Apartments | Waiver of Penalties |
| 12-037 | Lugonia Avenue Apartments | Waiver of Penalties |
| 12-051 | Madera Apartments | November 27, 2012 |
| 12-049 | Westlake Christian Terrace Apartments | December 26, 2012 |
| 12-055 | High Place East Apartments | December 26, 2012 |

5. *Withdrawn from Consideration*

6. Consideration of Appeal by Albert Otero Jr. of Assessment of Negative Points and Debarment from the CDLAC Tax Exempt Bond Allocation Program for American Housing Construction, Inc. and All Related Entities and Parties

Sean Spear reported this item related to a debarment action taken by the CDLAC Executive Director back in 2006; as well as the additional assessment of negative points issued earlier this year, and the related clarification that the penalties apply to American Housing Construction and all related entities and parties therein.

Mr. Spear referred to the staff report where the Committee could find the background history and actions taken. Mr. Otero's appeal has focused on whether the penalties should apply specifically to him. Under CDLAC's procedures at the time, penalties applied to the general partners, co-developers, and/or management agents, as specified in the procedures. It was the Staff's determination that Mr. Otero met this definition based upon Mr. Otero's lead role in the communications at the time and that CDLAC had a right to rely on Mr. Otero's representations and actions from that period.

That being said, CDLAC staff and Mr. Otero within the previous 36 hours had become mostly in agreement on a revised recommendation that would permit Mr. Otero to re-appeal this determination once all assessed negative points had expired. The current negative points assessed on January 4, 2012, will expire as of January 4, 2015.

Mr. Spear noted however, that there remained an issue related to the consideration that not only would Mr. Otero's participation be barred from CDLAC applications during this period, but also TCAC applications. Staff believes his participation on TCAC applications during this time would present similar risk issues and therefore had recommended that the language remain in place on the motion as drafted.

The revised motion staff recommended to the Committee stated the determinations to-date would be upheld. Mr. Otero would have the right to re-appeal the determination again when all outstanding negative points would have expired.

The Committee at that time, in their sole and absolute discretion, would evaluate Mr. Otero's re-appeal based upon a set of factors. These factors relate to Mr. Otero not submit new applications in any role, other than being a seller.

Secondly, that all existing affordability covenants on projects that Mr. Otero was already involved with be maintained during the period. Thirdly, that he would otherwise be in full compliance with all requirements by not only CDLAC but also other public entities.

Fourthly, that the parties would have successfully completed and leased up any non-CDLAC related projects; thereby demonstrating that he has been able to successfully complete other projects, which we may not have been involved with during the period.

Fifthly, Mr. Otero would receive some type of references from banks subject to the Community Reinvestment Act that would show that they would be potentially interested in doing business with him once the debarment was lifted.

Lastly, that Mr. Otero secure similar references from tax credit investors. In addition, any other factors which the Committee may deem appropriate at the time of consideration.

Bettina Redway asked if there were any questions or comments. At this point, Mr. Otero was given the opportunity to elaborate on his appeal request.

- Mark Aprea, on behalf of Mr. Otero, began his comments stating Mr. Otero originally did not understand that this was a lifetime ban. Mr. Otero felt the lifetime ban was unfair and would like the opportunity to demonstrate that he is, again, worthy at some point in the future to apply for bond allocations.

Mr. Aprea stated that Mr. Otero agreed with the Treasurer's Office and Mr. Spear and felt they had reached an agreement whereby Mr. Otero at the end of three years, when the negative points expire, would again have the opportunity to appeal.

Mr. Aprea continued to explain they were surprised when the written agreement presented to Mr. Otero included the language barring submittal of TCAC applications. This added provision had not been in prior conversations. While Mr. Otero agreed with all the provisions and is not contesting the debarment or negative points, he did not feel the debarment from TCAC was fair. He felt these are two separate Committees.

Mr. Otero has an existing nine percent project done with TCAC in 1987. The regulatory agreement has expired and qualifies for a new allocation of nine-percent credit. If he is banned, this project will become a market-rate project and risks that the tenants may be forced to find new housing.

Mr. Otero felt TCAC could make their own evaluation and not be bound by CDLAC determinations. Mr. Aprea reiterated that Mr. Otero agreed with all other provisions of the revised staff motion but the TCAC ban.

- Alan Gordon stated the Committee has spent a lot of time looking at this item. He continued that there were ongoing ethical lapses over a number of years. It is a privilege to apply and utilize the services of CDLAC and TCAC in our State. When someone doesn't deliver a project, the Controller's office views that as very serious lapse. He went on to say this did not happen once, but on numerous occasions. Mr. Otero has made frequent misrepresentations as well as the companies he is involved with. Mr. Gordon continued that he understood CDLAC and TCAC were two separate entities, though, the Boards are similar. He would go along with the existing motion with one exclusion; where the ongoing project that was referenced would be reviewed by TCAC to prevent the residents from being forced out.
- Bettina Redway stated she concurred with Alan Gordon. She went on to note the motion provided an opportunity to appeal in three years. Ms. Redway agreed with the Controller's addition.
- Alan Gordon asked for the name of the project from 1987 that is coming up for renewal.
- Mr. Aprea replied the project is Whittier Heights. American Housing has approximately 15 developments. In the next two years the regulatory agreements on five projects will expire.
- Jennifer Rockwell asked if in the agreement this is a lifetime ban or was it already in place.
- Bettina Redway replied it is a still a lifetime ban but provides a process of how he can appeal the decision in the future.
- Mr. Aprea explained what they were asking for was the words "or TCAC" be removed from the list of conditions. He went on to say that they have identified other projects that will need to be presented to TCAC in the next few years.
- Jennifer Rockwell clarified that what the Committee is voting on is to provide a pathway for the possibility of reconsidering a lifetime ban, if Mr. Otero chooses to follow the conditions.
- Bettina Redway explained the preference is that there is no participation with CDLAC or TCAC. However, the Committee would get feedback from TCAC if there is participation due to extenuating circumstances. Ms. Redway would be willing to consider language that specifically calls out the projects that are currently in the TCAC portfolio and where the regulatory agreements for those projects are expiring and that Mr. Otero expects to bring back in for refinancing and rehabilitation. In addition Ms. Redway agreed with Jennifer Rockwell regarding her statement that the Committee cannot bind TCAC or future Boards; but that this is only a pathway for reconsideration. She went on suggest Mr. Otero

should work directly with TCAC and keep CDLAC aware of the process for those mentioned projects, and that the applications for those projects be done with full transparency.

- Mr. Otero agreed with this condition.
- Alan Gordon asked if the motion needed to be read into the record or could it just be adopted and incorporated into the minutes.
- Bob Hedrick replied that the motion can be adopted and incorporated into the minutes.
- Bettina Redway asked Bob Hedrick and Mark Aprea to draft the language and return in a few minutes. *The Committee then continued this item until they returned.*

See continuation of Item 6 following Item 8.

7. Consideration of Appeals and Applications for an Allocation of the State Ceiling on Qualified Private Activity Bonds for Single Family Housing Programs and Awards of Allocation

Sarah Lester reported the Committee received two (2) applications from local issuers for the Mortgage Credit Certificate Program; one from the City of Los Angeles and the other from the County of San Diego, for a total of \$37,699,299. Staff recommended approval of \$37,699,299 to fund the two (2) Single Family Housing Programs as noted above.

Bettina Redway asked if there were any questions or comments.

- Alan Gordon asked how the program works.
- Sarah Lester explained under the single-family housing program, there are two programs that localities can choose to offer. One is the Mortgage Revenue Bond Program, which is a reduced interest rate loan program. The second, the MCC Mortgage Credit Certificate, is a tax credit program that allows the taxpayer to write off a portion of the interest for their loan. This program is for first-time homebuyers, and they cannot have owned a home within the past three years. There are also income requirements and purchase price requirements for the program.
- At this point, Alan Gordon briefly left the meeting.

Jennifer Rockwell moved for Approval. Bettina Redway seconded the motion. The motion for the Approval of Applications and Allocation of \$37,699,299 to fund two programs in the Single Family Housing Program passed 2-0-0.

Alan Gordon subsequently returned to the meeting and asked that his approval of this item also be noted in the minutes, though he was not present for the actual vote.

8. Consideration of Appeals and Applications for an Allocation of the State Ceiling on Qualified Private Activity Bonds for Qualified Residential Rental Projects and Awards of Allocation

Crystal Alvarez reported there were no appeals for this item. Staff recommends the waiver of the \$30 million application amount cap on the following projects:

| | | |
|--------|---------------------------------|---------------|
| 12-109 | Grand M-Grand Avenue Apartments | \$107,195,409 |
| 12-101 | Candlestick Heights Apartments | \$70,000,000 |
| 12-108 | Anton Monaco Apartments | \$36,360,000 |

Bettina Redway asked if there were any questions or comments.

Jennifer Rockwell moved for Approval to exceed the 30 Million Cap. Alan Gordon seconded the motion. The motion passed unanimously.

Crystal Alvarez reported staff recommended approval of \$10,200,000 to fund two projects in the rural pool; approval of \$107,195,409 to fund one project in the mixed income pool; and approval of \$407,092,404 to fund 27 projects in the general pool.

Bettina Redway asked if there were any questions or comments.

Alan Gordon moved for Approval, Jennifer Rockwell seconded the motion. The motion for Allocation of the State Ceiling on Qualified Private Activity Bonds for Qualified Residential Rental Projects and Awards of Allocation passed unanimously.

| Rural Pool | | |
|---------------------|---------------------------------------|---------------|
| 12-117 | Gridley Springs Apartments | \$3,200,000 |
| 12-102 | Woodbridge Village Apartments | \$7,000,000 |
| Mixed Pool | | |
| 12-109 | Parcel M-Grand Avenue Apartments | \$107,195,409 |
| General Pool | | |
| 12-114 | Tres Lagos Apartments | \$13,634,145 |
| 12-077 | Marygold Apartments | \$11,000,000 |
| 12-118 | Lugonia Avenue Apartments | \$18,000,000 |
| 12-070 | Columbia Apartments | \$16,000,000 |
| 12-076 | Water Gardens Apartments | \$11,000,000 |
| 12-081 | Broadway-Sansome Apartments | \$23,900,000 |
| 12-084 | Taylor Terrace Apartments | \$8,730,000 |
| 12-085 | Sequoia Manor Apartments | \$12,571,960 |
| 12-086 | Fuller Lodge Apartments | \$3,812,954 |
| 12-088 | Ivy at College Park Apartments | \$22,000,000 |
| 12-089 | Round Walk Village Apartments | \$12,500,000 |
| 12-090 | EC Magnolia Apartments | \$2,692,134 |
| 12-091 | Redwood Lodge Apartments | \$4,932,430 |
| 12-092 | Eden Issei Terrace Apartments | \$12,994,078 |
| 12-093 | Olive Tree Apartments | \$3,399,351 |
| 12-096 | COMM22 Family Housing Apartments | \$28,000,000 |
| 12-098 | 9 th & Broadway Apartments | \$23,000,000 |
| 12-100 | Villa Garcia Project Apartments | \$900,000 |
| 12-103 | Terracina Oaks Apartments | \$3,900,000 |
| 12-104 | Freeman Villa Apartments | \$4,850,000 |
| 12-106 | Casa De La Paloma Apartments | \$20,000,000 |
| 12-110 | Seven Palms Apartments | \$7,500,000 |
| 12-111 | Gold Country Village Apartments | \$7,915,353 |
| 12-113 | Wagon Wheel Family Apartments | \$18,000,000 |
| 12-116 | Berrellesa Palms Apartments | \$14,500,000 |

6. Item 6 Continued – Otero Appeal

- Bob Hedrick, Mark Aprea, and Albert Otero returned to the meeting. Bob Hedrick read into the record the following language that would become a modification to the notarized self-certification portion of the agreement. It would now state that: "...all parties have not been involved in any capacity with any CDLAC or TCAC application or subject project, other than potentially as a seller with no post-sale ownership or financial participation between this date and the re-appeal hearing, except as to the

following five projects; Whittier Heights, Otero Apartments, Palm Tree Village, Avalon El Segundo, Willow tree Village, Oak Tree Village.

Upon confirmation from TCAC that the compliance period on these projects has or will expire and without TCAC approval, low income units within the project will be at risk.”

- Bettina Redway called for a brief recess. Shortly thereafter, the meeting was resumed.
- Alan Gordon asked if Mr. Otero was in agreement with the entire motion now that the five projects were listed.
- Mr. Aprea and Mr. Otero asked for clarification as to what he and his company are able to do with regards to financing or construction.
- Bettina Redway then referred to Bob Hedrick for clarification.
- Bob Hedrick responded he believed Mr. Otero was asking about the phrase “in any capacity” that appears in the first bullet.
- Ms. Rockwell asked if Mr. Otero was referring to the parties that are listed in the applications.
- Mr. Otero replied his company buys and sells low-income housing tax credits, and that they are now a finance company.
- Mr. Spear asked Mr. Otero when he buys tax credits, was he thus buying into the partnership agreement for the subject property; becoming officially a limited partner in the ownership structure.
- Mr. Otero replied they broker the tax credits. He then stated limited partners are not ownership or control of any project.
- Mr. Spear then asked if Mr. Otero buys through a syndicator or is he admitted into a partnership.
- Mr. Otero responded they buy through a syndicated pool and invest in a blind pool.
- Mr. Aprea noted they are no longer contesting the debarment. They understand there have been past practices that need to be resolved. Mr. Otero recognizes that it is incumbent upon him to make sure he adheres to the requirements set forth. He does not want to jeopardize his chances to re-appeal.
- Ms. Redway stated it was her understanding he is barred from participating in purchasing tax credits in a deal. Alan Gordon agreed with the statement. Ms. Redway went on to reiterate under the terms of the agreement that he would not lend, or participate as a financier in any subject projects of TCAC or CDLAC, except those five projects identified in the revised motion.
- Ms. Rockwell stated what is currently in place is a lifetime ban. What the Committee is trying to do is provide a path that would allow Mr. Otero to see a lifting of that ban. What Mr. Otero does outside of that is totally up to him.
- Bettina Redway called for another brief recess. Shortly thereafter, the meeting was resumed.
- Mr. Aprea asked if the Committee would consider putting the matter over to a future meeting.
- Ms. Redway stated that she would like to move the resolution at this time. If the Committee needs to amend or clarify at a future date they can do so.
- Alan Gordon agreed with Ms. Redway.

Jennifer Rockwell moved the recommendation with the added amendment that was read into the record earlier. Alan Gordon seconded the motion. The motion passed unanimously.

See Exhibit A

9. Public Comment
No public comment

10. Adjournment
The Chairperson adjourned the meeting at 12:12 p.m.



CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE

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MEMBERS

BILL LOCKYER, CHAIRMAN
State Treasurer

EDMUND G. BROWN JR.
Governor

JOHN CHIANG
State Controller

EXECUTIVE DIRECTOR

Sean L. Spear

Exhibit A

September 26, 2012

Arthur Otero & Albert Otero, Jr., Co-Owners
Affordable Housing Construction, Inc. & Various Affiliates
3324 Wilshire Blvd., 4th Floor
Los Angeles, CA 90010

RE: Appeal of Negative Points and Debarment from CDLAC

Dear Messrs. Arthur Otero & Albert Otero, Jr.,

On September 26, 2012 at its regularly scheduled Committee meeting, CDLAC approved the following motion, related to your appeal of CDLAC's January 4, 2012 determination:

“Motion to uphold the updated 2006 CDLAC determination and deny the appeal of the assessment of negative points and debarment, but with the option for the subject parties to re-appeal when any and all negative points against them have expired. In consideration of said re-appeal, the Committee may elect, in their sole and absolute discretion, to evaluate factors such as, but not limited to, the following:

- A notarized self-certification that all parties have not been involved, in any capacity, with any CDLAC or TCAC application or subject project (other than potentially as a seller with no post-sale ownership or financial participation) between this date and the re-appeal hearing; with the exception of the parties' involvement with the following five (5) projects for TCAC purposes:

Whittier Heights/Otero Apartments
Palm Tree Village
Avalon El Segundo
Willow Tree Village
Orange Tree Village

Upon confirmation from TCAC that the compliance period has or will expire and without TCAC approval low income units within the projects will be at risk.

- That the parties have maintained all affordability covenants at housing developments currently owned by the parties;
- That the parties are currently in full project compliance for all publicly-assisted housing developments (CDLAC, TCAC, HUD, HCD, CalHFA, localities, etc.) currently owned by the parties;
- That the parties have successfully completed and leased-up non-CDLAC supported housing projects with the previous three years;
- That the parties have secured references from Community Reinvestment Act-participating financial institutions operating in California;
- That the parties have secured references from tax credit syndicators and/or tax credit direct-investors who have purchased TCAC-allocated Low Income Housing Credits within the previous two calendar years; and
- Any other factors as deemed appropriate by the Committee at the time of re-appeal.”

In order to preserve the potential for your re-appeal to be considered for possible approval, it is the Committee’s expectation that your participation in the CDLAC and TCAC programs will follow the above-described motion as outlined. CDLAC, on the staff level, also agrees to be available to meet once annually to review any new compliance issues and/or the parties’ compliance with this motion’s factors for consideration. Thank you for your attention to this matter.

Sincerely,

SEAN L. SPEAR
Executive Director