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TO: Tax Credit Allocation Committee Members

FROM: William J. Pavão, Executive Director

SUBJECT: Plans for Additional Federal Resources and Discretion

On July 30, 2008 the President signed into law The Housing and Economic Recovery Act of 2008 (H.R. 3221). The new statute amends the Low Income Housing Tax Credit (LIHTC) program in several ways. In light of the enactment of H.R. 3221 during the 2008 second competitive round, the California Tax Credit Allocation Committee (TCAC) must decide and act upon several features immediately. Specifically, I request that the Committee consider and act upon three (3) federal changes that could affect the allocation policy for the second round.

The first change makes available another $0.20 in LIHTCs per capita to California in 2008 ($7,310,643 in annual federal credit) and again in 2009. The second change permits the State to allow boosts of up to 30 percent (30%) to eligible basis for projects not previously permitted such a boost under federal law. The third change fixes the federal applicable percentage at no less than 9 percent (9%).

Additional Credit in 2008

Under the provisions of H.R. 3221, California receives another $7,310,643 in annual federal 9 percent (9%) credits for 2008. TCAC staff recommends that the Committee add these credits into the State set-aside/apportionment formula for the current, second round competition. This would assure that California meets its federal obligation to award at least ten percent of its federal credits to nonprofit sponsors, and its State statutory obligation to make 20 percent of its annual credits available to rural areas. In addition, this methodology would assure that each of the regulatory priority set-asides and geographic regions have access to their fair share of the augmented 2008 credits.

Staff also recommends loading additional credits into the Supplemental Set Aside to offset the depletion of that set-aside due to a 2007 special project award. That 2007 special project award drew approximately $1.1 million from the 2008 Supplemental Set Aside. Staff proposes restoring that amount at that point in the cascade where credits are placed in the Supplemental Set Aside. This would occur after each of the other set-asides has received its appropriate federal credit augmentation, and would therefore assure that the statutory and percentages have arrived in the nonprofit and rural set-asides.

Eligible Basis Increases Outside of Federally-Designated Areas

Under federal law a project located within a federally-designated Difficult to Develop Area (DDA) or Qualified Census Tract (QCT) may use 130 percent (130%) of the project's basis for calculating the project's federal credits. This basis boost was meant to provide additional equity to projects in high-cost or impoverished areas. H.R. 3221 now allows the State to designate other areas or project types for such a boost.

California state law created a State low income housing tax credit to complement the federal credit. By statute, the State credits were intended to provide additional equity to projects that could not claim 130% of a project's basis under federal law. In essence, the California State credits were intended to help non-DDA/QCT projects with additional credits.

The new federal authority would, as a practical matter, supplant a state resource that is available in ample supply. Committing additional federal credit per project under the proposed authority could reduce the number of projects receiving federal credits while possibly leaving State credits untapped.

For the 2008 second round, staff recommends that the Committee continue to rely upon federally-designated DDAs and QCTs for purposes of accessing the federal 130% basis boost. Going forward, non-DDA/QCT areas may continue to apply for and access State credits to attract in additional equity. Staff will engage the stakeholder community in a dialog as to whether circumstances would ever warrant permitting a federal credit boost in addition to a State credit award. Such a combination may require a State statutory change.

Using the Fixed Nine Percent Applicable Percentage

Nine percent credit projects placed in service after July 30, 2008 shall use an applicable percentage of not less than 9%. This provision includes projects currently being considered in TCAC's second funding round. However, TCAC staff recommends continuing to underwrite the current pending applications as they were presented, using the 8.0 percent credit factor. When these and earlier-awarded projects are placed-in-service, TCAC will use the 9% applicable percentage when preparing Form 8609s. However, using the higher applicable percentage at that time will not result in a larger credit allocation than was reserved for the project initially.

For 2009, TCAC will use the 9% credit factor in its application forms and underwriting.

Conclusion

Staff recommends that the Committee formally endorse the proposed actions listed above for the 2008 second competitive round. Such action would clarify how new federal provisions affect applications currently under consideration, and would signal the Committee's posture regarding these provisions going forward to 2009.