

CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

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DATE: November 25, 2008
TO: Tax Credit Allocation Committee Members
FROM: William J. Pavão, Executive Director
SUBJECT: Agenda Item 6: Returned Performance Deposits for
First Round 2008 Credit Recipients

Several first-round nine percent (9%) credit reservation recipients have returned their reservations and requested that TCAC return their performance deposits. Staff is bringing this matter before the Committee December 3rd as an information and action item.

Background

TCAC regulations require that a 9% credit reservation recipient submit a performance deposit equal to four percent (4%) of the first year's federal credit amount (Section 10335(e)). For example, a reservation of \$1 million in annual federal credit would require a performance deposit of \$40,000. By regulation, the performance deposit must be submitted to TCAC within 20 calendar days of the reservation notice, typically the Committee meeting date when reservations are awarded (Section 10335(e)(1)).

By regulation, if the sponsor returns credits to the Committee, "the performance deposit is not refundable, with the following exceptions. Projects unable to proceed due to a natural disaster, a law suit, or similar extraordinary circumstance that prohibits project development may be eligible for a refund." (Section 10335(e)(2)) Requests for a refund must be in writing.

First Round 2008

On June 20, 2008 the Committee awarded reservations to 36 projects, and one (1) additional project the following month on July 16th. Each of the 37 projects submitted a performance deposit by the 20 calendar day deadline.

TCAC regulations state that negative points may be assigned to 9% applicants for, among other things, "failure to utilize Tax Credits within program time guidelines, including failure to meet the 150 day readiness requirements, unless it can be demonstrated to the satisfaction of the Executive Director that the circumstances were entirely outside of the applicant's control." (Section 10325(c)(3))

On September 25, 2008 I posted a memorandum advising first round recipients that, in light of the chaos in the financial and equity markets, I would not assign negative points to any first round recipient who returned their credits before October 31, 2008. The early return of the credits would permit TCAC staff to award those credits promptly to an

appropriate waiting list project. The stated reason for the forbearance was that investors were pulling out of projects in large numbers and on very short notice. I viewed such circumstances to be beyond the project sponsor's control.

Returned Credits

A total of seven (7) first-round projects have returned their credit reservations to date. October 31st was the regulatory deadline for submitting a federally required "carryover allocation" request and paying an allocation fee of another 4% of the first year's federal credit amount. Two sponsors paid a carryover allocation fee and held the credits out to the November 17th 150-day readiness deadline.

Recommendation

In light of the financial turmoil in the equity markets, I am inclined to view refund requests for first-round projects favorably where the sponsor demonstrates that a previously interested investor or syndicator withdrew their interest after the reservation acceptance date of July 10, 2008. Locating a new investor from that point forward has been extremely challenging throughout the affordable housing industry.

For the applications that held the credits beyond the carryover allocation deadline, I would not return their performance deposit unless they showed evidence that an investor was committed to the project through October 31st, after which the investor pulled out of the project.

The recommended forbearance should not be considered precedent-setting, since the system-wide circumstances facing the national financial markets are unique.