CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE
Minutes of the April 30, 2009 Meeting

1. Roll Call.

   Bettina Redway for Bill Lockyer, State Treasurer, chaired the meeting of the Tax Credit Allocation Committee (TCAC). Ms. Redway called the meeting to order at 1:30 p.m. Also present: Terrence McGuire for John Chiang, State Controller; Tom Sheehy for Michael Genest, Director of the Department of Finance; Steven Spears, Acting Executive Director of the California Housing Finance Agency; Elliott Mandell for Lynn Jacobs, Director of the Department Housing and Community Development; and County Representative, David Rutledge.

2. Approval of the minutes of the March 25, 2009 Committee meeting.

   No public comment.

   MOTION: Mr. Sheehy moved to adopt the minutes of the March 25, 2009 meeting. Mr. McGuire seconded and the motion passed unanimously.

3. Executive Director's Report.

   Mr. Pavão announced that he brought a set of proposed Regulations to the meeting for the Committee's consideration. He explained that the proposed Regulations describe the protocol for awarding funds made available to TCAC by the Economic Stimulus bill.

   Mr. Pavão stated that he would update the Committee on how staff proposed to award 9% credits. He also announced that staff were recommending five applications for 4% tax credit awards.

4. Discussion and Consideration of a Resolution to Adopt Proposed Emergency Regulations, Title 4 of the California Code of Regulations, Sections 10300 through 10337, Revising Allocation and Other Procedures.

   Mr. Pavão stated that the proposed Regulations incorporate provisions of the American Recovery and Reinvestment Act of 2009 (ARRA). He explained that ARRA made a new cash resource called the Tax Credit Assistance Program (TCAP) available to California. He stated that TCAC was waiting for the Federal Department of Housing and Urban Development (HUD) to provide staff with guidelines for administering TCAP. He stated that HUD advised TCAC staff that states would have a short amount of time to apply for TCAP funds and present to HUD a plan for allocating the funds. Mr. Pavão reported that staff issued a first draft of protocols for allocating TCAP funds on March 17, 2009. Staff conducted a public comment period after releasing the draft and held three public hearings. Mr. Pavão stated that TCAC received feedback from more than ninety commenters. After considering the public comments, staff composed and released a second version of the TCAP protocols on April 16th. He noted that TCAC did not conduct a formal comment period after releasing the second draft. On April 27th staff release a third draft of protocols containing changes from the April 16th version. Mr. Pavão stated that the April 27th version was brought to the Committee for consideration today.

Mr. Pavão summarized a second federal resource made available to California by ARRA. He stated that TCAC would be able to exchange a portion of its 9% tax credits for cash through the United States Treasury. Mr. Pavão explained that TCAC would be able to exchange up to 40% of its 2009 credits and any prior year credits returned to TCAC in 2009. The exchange rate would be $0.85 on the dollar for each credit turned in.

Mr. Pavão pointed out that the federal government could produce new rules that would require changes to certain features of the TCAP policy drafted by the TCAC. He noted that any major changes would be brought to the Committee for consideration.

Mr. Pavão reported that TCAC received comments from many stakeholders who disagreed with the proposed exchange policy. He predicted that the Committee would hear a lot of comments from the public both in favor and in opposition of staff recommendations.

Mr. Pavão brought the Committee's attention to an amended page from the Proposed Regulations. He explained that prior to the amendment paragraph 3A stated that projects must have a bond allocation or a pending application with the California Debt Limited Allocation Committee (CDLAC) to qualify for the credit exchange program. He summarized the amended language which indicates that applicants need not re-apply for tax-exempt bond financing to apply for cash in lieu of credits, if the project already had a tax credit reservation with TCAC. He stated that 4% credit applicants seeking cash to fill gaps in their project financing would still use tax credits and still need tax-exempt bonds.

William Leach, from Palm Desert Development Company, stated that he had two questions and one comment for the Committee. Mr. Leach asked Mr. Pavão if recipients of TCAP funds would be subject to additional federal prevailing wage requirements.

Mr. Leach also asked if the Executive Director had authority to extend the placed in service deadline by six months for projects receiving TCAP funds as he did for projects receiving gap financing.

Mr. Pavão clarified that Mr. Leach's question is related to 9% projects. He stated that if a 2008 9% project sought gap financing while retaining 2008 credits, the project must still be placed in service by December 31, 2010 according to federal rules.

Mr. Leach asked Mr. Pavão why the placed in service deadline was extended for projects receiving exchange funds but not TCAP recipients.

Mr. Pavão explained that TCAC would only have the flexibility to extend the placed in service deadline after projects exchanged all previously awarded credits for cash.

Mr. Leach commented that he appreciated the TCAC staff's focus on getting the regulations to the public so that stakeholders could be prepared for the upcoming year.

Wendy Sako, from Mercy Housing, commented that she supported the adoption of the proposed TCAC Regulations. She stated that the passage of the Regulations would assist a Sacramento project she was involved with. Ms. Sako explained that the project was targeted to house the homeless and would help the Sacramento 10-year plan to end chronic homelessness. She stated that necessary funding for the project was approved and she was waiting for the proposed Regulations to pass so her project could move forward.

Rich Seralo, from Mercy Housing, read a letter that supported the proposed Regulations. Mr. Seralo stated, "Dear Treasurer Lockyer, Controller Chiang, and Deputy Director Sheehy: On behalf of Mercy Housing California, I would like to express our support for adoption of the proposed Tax Credit Regulations. Director Pavão has done an incredible job of reaching out to all stakeholder groups through focus groups, public hearings, and individual conversations. The affordable housing community has had an opportunity to ask questions and comment. The Regulations present a good system for TCAC to allocate and spend the nearly $600 million in federal funds that California will receive. These funds will help stimulate the economy and enable more affordable housing to be built. Adoption now is critical to meeting the federal time constraints. I urge you to adopt the proposed Regulations."

Ajit Mithaiwala, from ADI, commented that ARRA was enacted to stimulate the economy. He stated the government gave money to affordable housing programs like TCAC to help create more jobs and generate tax credit revenue. He stated that the funds assigned to TCAC should be distributed as quickly as possible to deliver the greatest benefit to the economy. He explained that funds should go to developers that are ready to build. He commented that the TCAP and exchange funds program are very complex. He asked the Committee to focus on projects that received 9% credit reservations in 2007 and 2008. He stated that 2007 and 2008 9% credit recipients should not have to compete for gap financing because they already won the 9% competition and the projects are ready to be built.

Salim Karimi, from ADI, commented that the intent of the stimulus funds was to create jobs and housing and to assist projects that were ready to proceed. He stated that 2007 and 2008 9% credit recipients were required to compete for the gap financing under the 250-point scoring system.

Luke Watkins, from Neighborhood Partners, stated that his opinion about the gap financing issue was the opposite of Mr. Mithaiwala's and Mr. Karimi's. He commented that if TCAC eliminated the competition for gap financing, public funds would be needlessly given away. Mr. Watkins stated that the 2007 and 2008 9% credit recipients were qualified to receive $0.85 on the dollar in lieu of credits, however, some developers would rather use gap financing as a means to hold on to their investors. He explained that developers who received gap financing instead of turning in their credits would give $0.74 to investors and use the remaining $0.12 to fund other projects. Mr. Watkins stated that providing gap fillers to developers who qualified for the exchange program was unnecessary. He stated that currently there are too many projects and not enough equity. He predicted that as federal grants were allocated there would be fewer projects chasing the same amount of equity.

Nick Stewart, from Burbank Housing, commended Mr. Pavão and his staff for their efforts to incorporate stakeholder suggestions into the proposed Regulations. He commented that TCAC did a remarkable job fielding recommendations and drafting multiple versions of the Regulations under strict time constraints. Mr. Stewart informed the Committee that his agency had a 2008 9% project for which the agency could not secure sufficient investor equity. He stated that the $0.85 exchange funds would allow the project to move forward and urged the Committee to adopt the proposed Regulations.

Ronne Thielen, from Centerline Capital, stated she would comment from a syndicator’s perspective. She stated that there seemed to be a conflict between advocates of public interests and syndication firms. Ms. Thielen suggested that public and private firms should have common goals. She stated that the lack of TCAC investors was due to economic conditions and the over exuberance of everyone in the industry. She stated that program user pushed for higher prices, which meant lower yields for investors. Ms. Thielen explained that when the government sponsored enterprises (GSEs) went out of business syndicators lost 40% of the market and yields became too low for new investors.

Ms. Thielen commented that the Regulations adopted this year were the back bone of the tax credit program. She stated that the Regulations documented the rent and income targeting and leveraging guidelines, which participants already agreed to. She stated that the new competition proposed by TCAC had an estimated 40% income targeting. Ms. Thielen stated that investors did not want projects that targeted 40% because rents would be too low to cover the investor’s expenses over the next 15 or 55 years. She suggested that for the 2009 9% competition, TCAC should group the new construction deals by project type then score them accordingly. She stated that developers in other categories would not be able to change their targeting because they were last year’s deals and were not reapplying for credits.

Ms. Thielen explained that projects unable to secure sufficient investor equity had 45 days to return credits and compete in the exchange program. She stated that if the project could not secure an investor within 90 days the project would not be eligible to compete for exchange funds and would also have to return credits. Ms. Thielen informed the Committee that syndicators did not have lines of credit any more. She explained that syndicators could not hold projects with a line of credit while they waited for a commitment from an investor. She predicted that most developers would return credits within 45 days instead of risking their ability to compete in the exchange program.

Ms. Thielen stated that exchange funds could only be used for 2009 projects. She explained that after the 2007 and 2008 credits were returned and reallocated in 2009 the recipients could be given new placed in service dates.

Ms. Thielen suggested that applicants should receive some priority in the gap financing competition if their project received bond financing from CDLAC and they were able to secure an investor.

Patrick Sabelhaus, from the California Council for Affordable Housing, congratulated Mr. Pavão and his staff on their efforts to incorporate the federal stimulus funds into the TCAC program. He predicted that program users would continue to seek clarification on the new Regulations during the 2009 competitions. Mr. Sabelhaus agreed with Ms. Thielen regarding the secondary point system. He commented that the secondary competition would further complicate an already complex award system. He suggested that the Committee continue the current competitive system with the tie breaker determining who received credits.

Mr. Sabelhaus stated that he spoke to a lender who told him the lending agency would not finance construction loans for projects that required TCAP funds to fill gaps in the permanent financing because the tax credit investor was unwilling to finance more than 30%. He stated that if applicants exchanged credits for cash or received gap financing the applicants might use just 30% of the funds and hold on to 65% until the project stabilized. He predicted that lenders would hesitate to finance large construction loans because they feared the loans would not be paid down even as rent revenues increased.

Mr. Sabelhaus stated that 15 or 20 years ago lenders worried about how tax credit proceeds would be paid into projects, so syndicators were required to escrow up to 95% of the money with the lenders. He explained that part of the funds were used during construction and the investors held back 50-60% so that the lender was assured money would available to pay down part of the loan. He commented that he understood Mr. Pavão wanted to make sure the state’s money would not be exposed to an undue amount of risk. Mr. Sabelhaus expressed his concern that syndicators were leaving the tax credit industry because lenders that were once heavily involved in the program were no longer participating in permanent or construction financing.

Jeanne Peterson, from the Reznick Group, complimented Mr. Pavão and his staff for their efforts in completing the proposed Regulations. She suggested the TCAC staff post all public comments they received regarding the TCAP and exchange funds. Ms. Peterson stated that being able to view all the comments and suggestions would be helpful to program users.

Ms. Peterson asked Mr. Pavão to explain what would happen if applicants do not return credits within 45 days. She also asked for clarification on pages 2 and 3 of the Regulations. She stated that there was a discrepancy between the state credit available for cash in lieu at $0.60 and credit available for gap financing at $0.65. Ms. Peterson asked Mr. Pavão to confirm that $0.60 applied to 2009 projects and $0.65 applied to the pre-2009 projects.

Mr. Pavão stated that Ms. Peterson was correct.

Ms. Peterson informed the Committee that other states received returned credits form prior years and, like TCAC, they reallocated them in 2009. She pointed out that when the other states reallocated their 2009 credits they extended their placed in service deadlines. She asked Mr. Pavão why 2007 and 2008 TCAC projects kept their original placed in service deadlines while the exchange deals received a 6-month extension.

Ms. Peterson stated that two items were not mentioned in the Regulations. She suggested that TCAC add a section to the Regulations that described new fees associated with TCAP and exchange fund allocation. She also suggested that TCAC disclose the amount money available to prior year 4% and 9% projects and 2009 4% and 9% projects.

Ms. Peterson predicted that TCAC would have to develop an asset protection strategy when the program became the "lender" rather the allocator of tax credits. She stated that an asset protection strategy would be quite different from the compliance oriented strategy TCAC used since 1993.

Ms. Peterson stated that when she first came to TCAC the average affordability was a concept in the Regulations. She explained that the Committee removed the concept because monitoring average affordability was too difficult for staff, project owners, and property managers.

Ms. Peterson commented that she supported deeper affordability, however, seeking deeper affordability made affordable housing less attractive to investors.

Joel Rubenthal, from Community Economics, commented that the main goal of the exchange funds and TCAP was to build affordable housing. He stated that the affordable housing program was broken because investors were not profiting enough to need a tax shelter. Mr. Rubenthal reminded the Committee that 40% of the 2009 credits could be exchanged, which gave investors the opportunity to cover 60% of the financing. He explained that the secondary competition was a method of determining when there is more demand for investors than supply.

Mr. Rubenthal commented that he disagreed with some parts of the Regulations, but overall he felt they reflected a good balance between the goal of building affordable housing and attracting investors to the program. He stated that one of basic objectives of the federal grants was to serve people with the lowest incomes by using affordability and leverage. Mr. Rubenthal stated that projects asking for the least amount of financing should or serving households with the deepest targeting should get an advantage in the funding competition. He urged the Committee members to support and adopt the Regulations.

Suzanne Vice, from the National Affordable Housing Trust, stated that she had been involved with TCAC since the program's inception. She stated that she was concerned about the asset management strategy. She stated that she did not see any language in the Regulations that explained how TCAC would monitor projects awarded TCAP and exchange funds. Ms. Vice explained that when she was part of the Compliance unit of TCAC the average affordability component was very difficult for staff and project managers to monitor. She suggested that TCAC consider extending the placed in service deadline for 2007 and 2008 projects.

Rob Weiner, from California Coalition for Rural Housing, stated that his company and its sister organizations supported the proposed Regulations. He commented that the Regulations were not perfect; however, they reflect the overall purpose of the program. He thanked Mr. Pavão for his efforts in putting together the Regulations.

Ms. Redway asked Mr. Pavão to respond to the public comments.

Mr. Pavão commended the program participants for their thoughtful and focused comments. He stated that one of the federal resources would invoke Davis Bacon prevailing wage requirements and the other would not. He explained that the proposed Regulations contain a section describing the two resources. Mr. Pavão stated that TCAC would try to deliver the federal grants in a manner that does not trigger prevailing wage requirements unless the project was already subject to the requirements.

Mr. Pavão responded to the public inquiry regarding the placed in service deadlines. He explained that the deadlines were related to the federal funds and the year in which 9% credits were reserved. Mr. Pavão stated that only after credits were exchanged for cash could the Committee extend the placed in service deadline for the project. He stated that he considered one commentor's suggestion to pull back the older credits and deliver more recent credits, but ultimately decided to recommend the system proposed in the Regulations.

Mr. Pavão responded to a commenter's suggestion to make gap financing available to 2007 and 2008 projects on a non-competitive basis. He stated that the source of the gap financing was likely to be TCAP funds. He explained that TCAP funds were legally required to be awarded competitively. Mr. Pavão informed the Committee that an earlier version of the Regulations showed bias toward 2007 and 2008 projects because staff wanted to trade in credits and deliver cash to the projects as quickly as possible. Mr. Pavão stated that the latest version of Regulations indicated a different strategy where a portion of the TCAP resources would serve to keep syndicators and equity partners in the program. He predicted that changing from the full exchange model to the gap filling model would enable TCAC to fund 15 to 20 additional projects.

Mr. Pavão stated that staff tried to retain the original tax credit model when they incorporated the federal resources. He explained that a key scoring factor would be the amount of cash requested relative to project costs. Mr. Pavão stated that projects receiving gap financing would have a strong competitive advantage over projects seeking a full exchange of credit for cash. He gave the example that a syndicated project with a secure investor that just needs a gap filler would be more competitive than a project seeking cash in lieu of credit.

Mr. Pavão responded to the public inquiry regarding a secondary competition for 9% applicants. He explained that applicants who already competed successfully for 9% credits would only be subjected to a secondary competition in two instances: 1.) The project was a prior year 9% deal seeking gap financing and 2.) The project was a 2009 9% deal seeking cash in lieu of credit. Mr. Pavão stated that TCAC needed to develop a competitive scheme because the program did not have enough resources to fund all of the projects. He explained that the proposed scheme acknowledges certain types of projects like Special needs, Rural, and At-risk experienced a systemic disadvantage while competing for equity and should have a competitive advantage in the least heavily weighted scoring factor. Mr. Pavão stated that the leverage and average affordability scoring factors were weighted equally and more heavily than the first factor. He stated that some projects would have federal rental subsidies, a precious resource in making affordable housing available to extremely low-income households.

Mr. Pavão explained that in the past TCAC policy required projects to maintain average affordability. He assured the Committee that he was not proposing TCAC return to the average affordability system. Instead he proposed that projects commit to certain number of units and a certain income level. He gave an example that a project may have 20 units and 60% of area median income (AMI) and 14 units at 40% of AMI. He stated that staff would monitor the number of units the applicant committed to at each income level.

Mr. Pavão responded to the public request to clarify the 45-day and 90-day deadlines. He clarified that the deadlines applied to 2009 9% applications. He stated that the 9% winners would receive a reservation of credits and a cash award. Mr. Pavão explained that the applicants have a total of 90 days to secure an equity investor. If after the first 45 days they did not find an investor they could compete to exchange their reserved credits for cash. He stated that applicants who chose not to compete would have an additional 45 days to find an investor.

Ms. Redway asked Mr. Pavão if he thought applicants would likely choose to compete in the exchange competition rather than risk losing all financing opportunities after the initial 45-day deadline.

Mr. Pavão stated that choosing to compete after the first deadline was not necessarily the safer option because applicants would have to return in their credits and cash then compete for $0.80 on the dollar. He stated that if applicants chose to hold their credits after the first deadline they could secure an equity partner at $0.74 and receive an additional $0.12 in gap financing before the 90 day deadline. Mr. Pavão stated that TCAC staff tried to create a competitive model that focused on equity investment.

Mr. Pavão responded to the comment regarding new fees associated with administration of the federal grants. He stated that TCAC staff were looking for partners to help them design the fee structure for loan originations. He stated when the design is finalize staff would draft a proposal to add the fee structure to the Regulations.

Mr. Pavão responded to the comment that TCAC staff had not released details about their asset management strategies. He explained that staff were waiting for guidance from federal counter parts. He stated that as federal guidelines were given to TCAC, staff would make proposals to incorporate the federal standards into the Regulations.

Mr. Pavão responded to the inquiry regarding the amount of money available to applicants. He stated that staff was gathering information to determine how much money would be available in each funding competition. He reported that staff would announce the final amounts in the near future.

Mr. Pavão responded to the comment regarding deeper income targeting. He stated that investors were hesitant to finance projects that had deeply income targeted units because lower rents put constraints on revenue. Mr. Pavão stated that for the 2009 9% competition the deeper income targeting factor would be applied to exchange candidates only. He stated that staff's intention was for 2009 applicants who had secured investor equity and TCAP funds to compete under the traditional scoring system.

Ms. Redway asked Mr. Pavão to respond to the comment regarding construction loans.

Mr. Pavão summarized that if applicants received cash lieu of credits, they would pay down their construction loans using 30% of the funds at loan closing and 65% at construction completion and 90% occupancy. He stated that TCAC would hold up to $500,000 of funds until the applicants submitted their final cost certifications. Mr. Pavão reported that staff increased the percentage to be paid into the construction loan at closing due to suggestions from lenders.

Mr. Sheehy commended Mr. Pavão and his staff for managing the complex task of administering the federal grants. He commented that he was delighted by TCAC staff's willingness to meet and speak with stakeholders about their concerns. He stated that he would support adoption of the proposed Regulations today if the Committee members agreed to consider making changes based on public comments and submitting an amended set of Regulations at the next meeting.

Ms. Redway stated that she was willing to support the proposed Regulations if the Committee agreed on the substance and instructions recommended by TCAC staff. She asked Mr. Sheehy to confirm that the Committee would not entertain substantive changes to the Regulations.

Mr. Sheehy stated that he was not suggesting the Committee entertain fundamental policy changes. He stated that he would like the members to be willing to make technical changes that would help clarify policies.

Mr. McGuire stated that he agreed with Mr. Sheehy's comments and he was prepared to support a motion to adopt the proposed Regulations.

Mr. Rutledge commented that the Committee needed to put Regulations in place as soon as possible. He stated that he understood TCAC wanted deeper income targeting. He explained that the investor community was concerned about deeper income targeting because low rents produce insufficient cash flow. Mr. Rutledge commended Mr. Pavão for listening to stakeholder concerns.

Mr. Spears complimented Mr. Pavão and his staff for addressing as many stakeholder concerns as they could. He stated that due to the urgent need for affordable housing he supported adoption of the proposed Regulations today.

Mr. Mandel thanked Mr. Pavão and his staff for their hard work. He suggested the Committee adopt the proposed Regulations.

MOTION: Mr. Sheehy moved for approval of staff recommendations. Mr. McGuire seconded and the motion passed unanimously.

5. Discussion of Establishing One Funding Cycle for the Federal and State Low Income Housing Tax Credits for the year 2009.

   Mr. Pavão stated that due to the timelines associated with the federal grants, staff determined that 2009 9% credits should be awarded in a single funding round rather than two. He proposed that the Committee award 2009 credits at the September 9^{th} meeting. Mr. Pavão stated that after credits were awarded staff would send reservation letters to the winners, when applicants would sign and return with their performance deposits. He stated that TCAC would send the applicants executed reservation letters by September 29^{th}, so the applicant could access the federal resources. Mr. Pavão informed the Committee that the adopted Regulations had provisions allowing applicants to state that they have certain documents, which they do not actually have and would not be required to submit until August 17, 2009. He explained that the provisions were added to assist applicants who intended to compete in the second funding round.

6. Discussion of and Action on 2009 Applications for Reservation of Federal Low Income Housing Tax Credits (LIHTCs) for Tax-Exempt Bond Financed Projects, and appeals filed under TCAC Regulation Section 10330.

Project #	Project Name	Credit Amount
CA-2009-808	Lakeside Silver Sage Apartments	$809,208
CA-2009-809	Arroyo Grande Villas	$489,036
CA-2009-810	Moonlight Apartments	$190,967
CA-2009-816	Golden Age Garden	$418,421
CA-2009-817	San Jacinto Senior Apartments	$125,887

MOTION: Mr. Sheehy moved for approval of staff recommendations. Mr. McGuire seconded and the motion passed unanimously.

7. Public Comment.

   There were no comments from the public.

8. Adjournment.

   The meeting adjourned at 3:30 p.m.