

**CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE**  
**Minutes of the October 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 11:46 a.m. Also present: State Controller Betty Yee; Eraina Ortega for Department of Finance Director Michael Cohen; California Housing Finance Agency (CalHFA) Executive Director Tia Boatman-Patterson; Russ Schmunk for Department of Housing and Community Development (HCD) Acting Director Susan Lea Riggs; City Representative Lucas Frerichs; and County Representative Santos Kreimann.

2. Approval of the minutes of the September 23, 2015 Committee meeting.

MOTION: Ms. Yee moved to adopt the minutes of the September 23, 2015 meeting. Ms. Ortega seconded and the motion passed unanimously by a roll call vote.

3. Executive Director's Report.

Executive Director, Mark Stivers reported that the legislature passed two bills, related to the low income housing tax credit (LIHTC) program; however they were vetoed by the governor. The first bill, AB 35, would have increased the amount of state credits by \$100 million per year for 5 years. The second bill, SB 377, would have changed the structure of state credits with the hope of increasing the price developers received for each dollar of credit awarded to them. The governor's reasoning for the vetoes was that the state budget could not afford to provide additional tax credits under AB 35, SB 377 and other tax credit related bills.

Mr. Stivers advised the Committee that he spoke with sponsors of the Fullerton Heights project after the last TCAC meeting. He reminded the Committee that the project was passed over by staff during the Second Round competition sort. He explained that less than half of 1% of the available 9% credits remained when staff finished the sort. The next project in line on the waiting list was a San Diego applicant requesting four times the amount of credit available. Mr. Stivers confirmed that Fullerton Heights would not have been a waiting list project even if there was sufficient credit available.

Mr. Stivers explained that the Committee does not have regulatory authority to select projects for funding outside of the sort process. He noted that if such authority existed, he would be wary of recommending action. He stated that the Fullerton Heights sponsor could apply for credits again next year.

Mr. Stivers stated that his staff would quickly implement the requirements of the new regulations if the Committee approved them. He reported that staff has been

inundated with requests to issue Form 8609's to sponsors of finished projects. He stated that getting through the backlog of Form 8609's was a top priority for TCAC. He stated that CalHFA might be able to loan additional staff to TCAC to assist in their efforts.

Mr. Stivers reported that TCAC has historically allocated state credits to eligible 9% projects. In the last 2 years, however, TCAC has funded projects using future years' allocations. He explained that staff would be seeking ways to address the growing problem of over allocation of state credits. He noted that difficult to develop area (DDA) boundaries could change in the future resulting in even greater demand for state credits.

Mr. Stivers explained that if states do not use their 9% tax credits in a given year, the unused credits are returned to the federal government and reallocated to states that have used at least 99% of their federal credits. He reported that California has used 99% of its credits. As a result, the state will receive \$388,272 in credits, which TCAC will apply to next years' projects.

4. Discussion and consideration of the 2015 Second Round Applications for Reservation of Federal Nine Percent (9%) and State Low Income Housing Tax Credits (LIHTCs).

Development Section Chief, Anthony Zeto, reminded the Committee that there were two appeals pending at the time staff posted the list of preliminary recommendations for the Second Round awards. In addition, one project was withdrawn shortly before the Second Round awards meeting.

Mr. Zeto reported that staff recommended two additional projects for award of Second Round 9% credits. The first project is in the at-risk set aside and the second is in the city of Los Angeles region. Mr. Zeto confirmed that the projects were scored, ranked and reviewed for compliance with federal and state regulations.

MOTION: Ms. Ortega moved approval of staff recommendations. Ms. Yee seconded the motion passed unanimously by a roll call vote.

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 there were 23 projects recommended under this agenda item. Four of them were new construction projects and 19 were rehabilitation only or acquisition and rehabilitation projects. The overall number of projects was higher than staff had received in prior years. Mr. Zeto confirmed that the projects were reviewed for feasibility and compliance with federal and state regulations.

MOTION: Ms. Ortega moved approval of staff recommendations. Ms. Yee 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, Section 10302 through 10337, revising allocation and other procedures.

Mr. Stivers proposed three technical amendments to the final recommendation to be considered under this agenda item. First, staff created a new definition for a transfer event, to which certain rehabilitation requirements apply. One of the exemptions from being a transfer event is the sale of a project to an unrelated party for which the parties entered into a purchase agreement prior to October 9, 2015. Mr. Stivers stated that technical amendment would expand this exemption. He proposed that TCAC also exempt the sale or assignment of the partnership interest in a project owner between unrelated parties for which the parties entered into a purchase agreement prior to October 9, 2015.

Mr. Stivers stated the second technical amendment related to the 9% scoring criteria. Under the current system, TCAC awards points for management company experience. The final recommendation proposes to redraft the language in the regulations to clarify how special needs projects will be reviewed. He stated that due to a drafting error staff removed the requirement that regular projects have experience with at least two tax credit projects to receive full points.

Mr. Stivers summarized that general projects seeking management company experience would get points based on the number of related projects but staff will verify that each management company has experience with at least 2 tax credit projects. He noted that there are ways to contract if a firm does not meet the 2 project requirement.

Mr. Stivers stated that the third technical amendment related to Section 10327(g)(8). The provision in this section would allow applicants to continue to use hold harmless rents at re-syndication. In certain situations projects cannot use hold harmless rents. Therefore staff proposed a regulation amendment that will allow a given project to use the hold harmless rents at the request of the applicant.

Mr. Gordon suggested the Committee first adopt the three technical amendments to the regulation package, then vote on the whole package after hearing public testimony.

MOTION: Ms. Yee moved to adopt of the three technical amendments into the full regulation package. Ms. Ortega seconded and the motion passed unanimously by a roll call vote.

Mr. Stivers stated that he would highlight some of the major changes and initiatives that staff planned to undertake. He reported that staff held listening sessions around the state and received many suggestions on ways to improve the tax credit program. Upon conclusion of the listening sessions staff reviewed public suggestions and developed some of their own ideas. On July 15<sup>th</sup> staff issued the initial statement of reasons, which included proposed regulation changes. Staff held a 45-day public comment period to gather public feedback regarding the proposed changes.

Mr. Stivers reported that staff received about 100 comments regarding the first set of proposed changes. In response to public comments, staff published a second document on September 9<sup>th</sup>, which proposed revisions to a subset of the full regulation change package. Staff held a 21-day public comment period only for the subset of revisions. Upon conclusion of the comment period staff consolidated public suggestions and staff responses into a final statement of reasons.

Mr. Stivers reported that during the first comment period staff held four public hearings in various locations around the state. He noted that there was a substantial amount of dialogue between the public and staff over an extended amount of time. Treasurer's executive staff and TCAC staff accepted every meeting request they received.

Mr. Stivers explained that a federal government ruling, which will take effect next year, will impact the difficult to develop area (DDA) boundaries causing many projects to become infeasible. He reported that staff made special efforts to implement the regulation changes by the end of 2015 so applicants in a DDA can apply for credits in the current year and maintain their DDA status.

Mr. Stivers stated that in reviewing the regulations staff considered ways to use more of the bond cap available to 4% tax credit applicants. Staff determined this goal could be accomplished by increasing basis in projects. Accordingly, staff proposed to eliminate the cap on the 4% developer fee, which would allow projects to realize significantly greater basis and a higher volume of credits. Additionally, staff also proposed to allow low-value projects to use the amount of assumed debt on their properties as the acquisition basis, which may be higher than the appraised value historically used.

Mr. Stivers explained that under the proposed regulations 9% tax credit applicants with DDA status will be grandfathered into their DDA for one year. He noted that TCAC does not have legal authority to grandfather 4% tax credit applicants into a DDA. Therefore many 4% applicants may not realize the 30% basis boost from the DDA if they do not submit their applications by the end of the year.

Mr. Stivers stated that another goal of staff was to reduce project costs associated with the TCAC program, although the costs exist to promote secondary public benefits. He reported that staff decided to scale back some of the costs associated with the 4% program due to the amount of unused bond capital and underutilized 4% tax credits.

Accordingly, staff has proposed to deemphasize sustainability. Mr. Stivers explained that staff's proposal also will require rehabilitation projects to build their properties to code with respect to accessibility while new construction projects are held to a higher standard. He reported that staff clarified some of the minimum construction standards in the regulations and eliminated the need for market studies for certain projects.

Mr. Stivers commented that the proposed changes can make a number of projects feasible although many projects have feasibility issues greater than TCAC policy can address.

Mr. Stivers explained that the proposed regulation changes include accountability measures for rehabilitation projects being sold or refinanced. The measures ensure that the rehabilitation needs of projects are accounted for prior to equity being distributed to partners. The regulation changes also provide points to 9% projects that use greywater, rainwater, or recycled water.

Mr. Stivers reported that staff proposed to increase the special needs housing goal to 25%. He commented that special needs populations are some of the most vulnerable in California and the proposed changes will ensure that TCAC does not skip over meritorious projects serving those populations.

Mr. Stivers reported that staff has created a 20% rehabilitation goal for 9% tax credit applicants. He stated that TCAC would like to the 9% program to be primarily focused on creating new construction projects. He suggested that the proposed changes will encourage more rehabilitation projects to apply for 4% tax credits.

Mr. Stivers reported that the Native American apportionment will continue under the proposed regulations. He noted that TCAC has awarded 4 projects from that apportionment. He reported that one of the applicants returned their award while the other three have moved forward in development.

Mr. Stivers reported that staff proposed changes to the tie-breaker in order to encourage development of larger projects, which tend to be more cost effective. Staff's proposal will also address some of the externalities associated with the current tie-breaker. He commented that it is impossible to create a tie-breaker that everyone can agree on. In addition, it is extremely difficult to find a tie-breaker that balances public policy goals in a manner that does not create opportunities for manipulation.

Mr. Stivers thanked his staff for their efforts in completing the proposed regulation changes. He also thanked the California Debt Limit Allocation Committee (CDLAC) executive director, Jeree Glasser-Hedrick, for her assistance during the long process.

Ms. Yee stated that she supported the proposed regulatory amendments; however there were several areas of concern she would like to address. She stated that she was not comfortable adopting the full regulation package because she had not reviewed the feasibility analysis associated with some of the amendments. She stated that she was concerned about 3 specific areas of the proposals. She stated that she would like these areas to undergo a more robust analysis as they may have a long term impact on the considerations of the Committee.

Ms. Yee stated that she was concerned about TCAC policy regarding the tie-breaker, including the soft leverage funds provision, the size factor, and the

addback to the credit efficiency factor. The second area of concern was the new 20% acquisition rehabilitation soft cap provision. The third area of concern was the increase of the special needs soft cap. Ms. Yee stated that these areas will continue to influence the actions of the Committee in the future.

Ms. Yee stated that the goals Mr. Stivers described were being accomplished by many aspects of the revisions to the regulations. She approved of the revisions to the point system for the 9% program and staff's search for potential areas to maintain costs. She also approved of tracking the regulation of transfer events to ensure that deferred maintenance is accounted for when properties are transferred or re-syndicated.

Ms. Yee thanked the TCAC staff for the care they took in balancing numerous policy objectives and a diverse range of provider needs. She commented that she was uncertain as to whether TCAC could increase production on a large scale. She suggested staff may be tinkering around the margins because they could not control the externalities of the program.

Ms. Yee stated that she found herself losing sight of some of the goals staff sought to achieve as she reviewed the proposed regulation changes. She stated that the data and feasibility analysis associated with some of the amendments represented a missing piece with respect to her comfort with the entire regulation package.

Ms. Yee commented that staff should have published more transparent information regarding the sources of public comments as she found it difficult to track the evolution of some of the proposed regulation amendments.

Ms. Yee stated that she still had a lot of questions regarding the feasibility analysis. She asked if TCAC was maximizing the value of the limited credit dollars built into the program. She stated that staff may be able to answer this question if they could get more practical feasibility information. Ms. Yee stated that staff may need to examine whether the program is efficiently awarding credits and if developers are utilizing credits efficiently.

Ms. Yee stated that the equity take out provisions in the regulations do not appear to measure their impact. She felt more information could have been added in this section as it was unclear whether the provisions extended far enough.

Ms. Yee stated that she was not comfortable adopting the full regulation package however she felt the board could adopt a fairly robust portion of the regulations. She stated that the Committee would continue to work with the legislature to gain more breathing room in terms of the resources available. She suggested TCAC seek ways to add more certainty with respect to increasing production. TCAC should also facilitate an environment where everyone can be involved in the process.

Mr. Gordon asked Ms. Yee if there were specific amendments she wished to include in the regulations.

Ms. Yee stated that she did not wish to add specific amendments. She noted that this rule making process was new to her. The processes she was previously involved in brought all interested parties together so that all concerns could be heard and the sources of those concerns could be understood.

Ms. Boatman-Patterson reported that HCD, CalHFA, TCAC and CDLAC had been working together to provide data related to feasibility and data analysis. HCD was working diligently on the state wide housing plan, which would include data trends and analysis. She reported that during the summer CalHFA hired a graduate student to perform a gap analysis for the State using TCAC project information.

Ms. Boatman-Patterson stated that CalHFA is committed to working with the other state agencies on the data and feasibility analysis so they can make good informed decisions. She reported that CalHFA has reviewed some large projects being refinanced and was also struggling with the issues related to equity take out.

Ms. Boatman-Patterson explained that many of the large equity take out deals she has seen were not necessarily caused by anything the State has done. Federal tax credit subsidies, rental subsidies and being in a high cost area have caused projects to become very valuable. She explained that staff must determine if the equity being taken is going back into affordable housing. She noted that in many cases the equity taken out was reinvested into affordable housing.

Mr. Frerichs commended Mr. Stivers and his staff for efforts in managing the regulations process. He commented that most of the proposed changes were quite positive in that they provide points for items such as sustainability, recycled water and transit passes. In addition, staff added certain accountability items to the regulations.

Mr. Frerichs stated that he was disappointed with the proposal regarding building to code for accessibility. He did not understand the purpose of the blanket reduction in the percentage of accessible units for rehabilitation projects particularly when there is a hardship exemption in place which seemed to be working. He suggested that the exemption could be adjusted rather than the Committee adopting a blanket reduction.

Mr. Frerichs stated that he has noticed a drastic oncoming of aging populations in the City of Davis and throughout California. He stated that there will be an increased need for accessible units particularly for citizens with disabilities. He suggested that if the new regulations were adopted staff should add explicit language to make the accessibility requirements very clear. Mr. Frerichs advised the Committee that representatives from Disability Rights California (DRC) may also wish to comment on this issue.

Mr. Frerichs stated that due to the importance of the issues under discussion and in the interest of transparency, staff should have included a summary of the report

associated with Agenda Item 6 in the Committee meeting binders. In addition, staff should have included web links to the full report on the Agenda. Mr. Frerichs commented that finalizing the regulations has been a robust public process over the past nine months. He thanked the Committee for their attention.

Mr. Stivers stated that early in the regulations process staff convened a focus group to represent the general community. Staff discussed a number of issues with the group and gathered valuable feedback. After staff published their initial proposal they convened another working group to discuss backend issues like equity distribution. The language in the proposal regarding capital needs assessment is a reflection of the group discussion.

Mr. Stivers stated that he was willing to ascribe comments to individual commenters in future regulation change proposals even though TCAC has not done this historically. He would also ensure that the final statement of reasons was included in the Committee meeting binders.

Mr. Stivers agreed to work with Controller Yee regarding her concerns about data and feasibility analysis. He noted that there were limitations on the information staff could analyze.

Mr. Stivers reported that a commenter suggested TCAC reduce the 10% at 50% requirement for 4% tax credit projects. He explained that it would be difficult to determine how many more projects would apply for credits if TCAC made the suggested change. Staff would not be able to analyze projects that do not exist or have not been submitted to TCAC. In addition, staff would not be able to determine which funded projects would have been infeasible had they included 10% of units at 50%. Mr. Stivers stated that it would be difficult to determine how many new projects coming in were already feasible and if the affordability of those projects would be reduced.

Mr. Gordon invited Dara Schur from DRC to comment.

Ms. Schur stated that she wished to address the accessibility issue Mr. Frerichs spoke about. She explained that DRC and a number of other disability rights groups were very concerned about the reduction of accessibility requirements from 10% to 5% for rehabilitation projects. She stated that there was a much larger percentage of 9% projects that were rehabilitation as opposed to new construction.

Ms. Schur stated that the Disability Rights Education Defense Fund, a leading national disability rights group, and the California Foundation of Independent Living were among the organizations that submitted comments in opposition to the change in accessibility requirements. A number of non-profit groups and independent living centers also submitted comments.

Ms. Schur stated that California independent living centers were on the front lines trying to help people with disabilities find housing that is both affordable and accessible. She commented that this work is nearly impossible due to the current

affordable housing crisis. She stated that the Committee adopted the 10% requirement 2 years ago in order to provide leadership in this area and make up for decades of excluding people with disabilities from affordable projects.

Ms. Schur stated that TCAC's leadership has resulted in a number of organizations, including HCD, adopting their requirements by referencing TCAC standards. She stated that Committee actions could affect thousands of TCAC units and units funded by other programs.

Ms. Schur explained that her firm was troubled by TCAC's proposal to reduce accessibility requirements across the board. The firm recognized some rehabilitation projects will be infeasible if they include fully accessible units; however the regulations provide an exemption process whereby the executive director of TCAC may waive accessibility requirements if a given sponsor can demonstrate that accessibility costs are prohibitive to their project. She noted that there is an equivalent exemption process within the California Building Code provisions.

Ms. Schur commented that the statement of reasons does not provide sufficient data regarding feasibility problems associated with the huge number of projects submitted. The statement provides no information about the usage of the exemption and whether exemptions were approved or denied. Ms. Schur stated that cutting the accessibility requirement in half will cause significant consequences for real people trying to find accessible housing.

Ms. Schur stated that her firm would be glad to participate in stakeholder groups to ensure important viable projects were not being delayed because of a regulation that does not make sense for those projects. She expressed concern about the potential outcome of reducing the accessibility requirements. She estimated that 95% of rehabilitation project units would be unavailable to anyone who uses a wheel chair or has another significant disability.

Ms. Schur urged the Committee to reject the proposed reduction to accessibility requirements. She suggested TCAC modify the exemption process to make it more effective rather than adopt a policy change that could remove accessible units from the market.

Mr. Gordon stated that staff proposed to increase the housing type goal from 15% to 25% for Special Needs projects, under which disability accessible projects are qualified. He asked why Ms. Schur felt this proposal did not address her concerns.

Ms. Schur stated that the proposal Mr. Gordon described addressed an entirely different population. She explained that Special Needs projects could be targeted to serve very specific communities. Such projects typically have additional supportive services and resources in place. For example, Special Needs projects may support a formerly homeless population in need of services like counseling for substance abuse.

Ms. Schur explained that she was concerned about projects that were meant to accommodate people who only need accessible apartments, not extra services or a particular level of segregated services.

Mr. Gordon asked Mr. Stivers to explain why the existing exemption process does not meet the needs with regard to excessive rehabilitation project costs.

Mr. Stivers commented that he felt TCAC would remain a strong leader in the area of accessibility even if the proposed changes were adopted. He stated that the TCAC requirements would be twice that of the California building codes in two areas. First, TCAC would require 10% of the units in new construction projects to be accessible. In addition, TCAC would require 4% of the units in rehabilitation projects to be communications accessible.

Mr. Stivers stated that TCAC requirements would be consistent with building codes with regard to mobility accessibility requirements for rehabilitation projects. He advised the Committee that each week he receives one or more requests to waive the requirements. He estimated the cost of increasing the accessibility standard from 5% to 10% to be \$500,000 per project. He commented that developers who have rehabilitation budgets ranging between \$3 million to \$5 million often have difficulty covering this cost.

Mr. Stivers stated that his staff were not building code experts and often have trouble ascertaining what can be done regarding accessibility. He explained that making units accessible almost always involves moving walls and tearing out existing kitchens. He described a situation in which a project sponsor was required to obtain a building permit in order to move walls. Mr. Stivers explained that the permit would have triggered additional parking requirements imposed by the city and installation of a multi-level parking garage. He described another situation in which a sponsor would have had to re-grade the entire entrance to the project site in order to meet accessibility standards.

Mr. Stivers stated that TCAC receives requests for waivers on a regular basis. He stated that quite a few of them have been granted. He explained that these waivers often require provision of the first 5% of units and only require provision of the second 5% as long it does not require costly structural changes.

Mr. Stivers stated that it is a very difficult for staff to enforce building codes that they do not write or fully understand. He commented that TCAC would still continue to be a leader with regard to accessibility in new construction projects and communications accessibility in rehabilitation projects.

Mr. Stivers reported that the Committee last year adopted a related regulation change, which applies to all the existing accessible units in the TCAC portfolio. He explained that when an accessible unit becomes available the project owner will be required to select a new tenant from the waiting list who is in need of that unit rather than selecting the first person on the list regardless of disability. Mr. Stivers predicted that this regulation change would cause a large volume of existing units to become available to people with mobility impairments.

Ms. Schur stated that she appreciated the regulation change. She noted that the change was consistent with the requirements associated with federal awards. She strongly urged the Committee and staff to take some time to consider implementing a streamlined exemption process rather than cutting accessibility requirements across the board. She agreed that the projects Mr. Stivers described should be exempt from accessibility requirements. Ms. Schur stated that there are presumably many more projects that do not have the issues Mr. Stivers described, yet their accessibility requirements will be reduced under the proposed policy.

Ms. Ortega asked Mr. Stivers to confirm that the proposal for a blanket reduction in accessibility requirements would not require documentation to show that the work is financially infeasible.

Mr. Stivers stated that, under the proposed regulation change, rehabilitation project sponsors would work with the building department to meet their code requirements. He stated that TCAC would not require additional documentation related to mobility accessibility; however TCAC would still require the additional communication accessibility and documentation of that.

Ms. Ortega stated that she sympathized with staff's position with respect to feasibility reviews, interpreting building codes and deciding which projects should be exempt from accessibility requirements. She stated that she was concerned sponsors will no longer have to conduct their own analysis to determine if their projects could have been built accessible.

Ms. Ortega suggested staff may be able to develop a policy, which requires sponsors to demonstrate why they cannot achieve the 10% accessibility requirement without the need for further analysis by staff. She commented that TCAC policy should not make it easier for sponsors to avoid trying to achieve the higher percentage; however the long-term outcome may not be any different if staff continued to review and approve most waiver requests.

Ms. Boatman-Patterson asked Mr. Stivers how many project sponsors would request accessibility exemptions within a group of 10 projects.

Mr. Stivers stated that the percentage would be fairly high based on the number of requests associated with rehabilitation projects staff reviewed over the past 2 months. He reported that TCAC was receiving waiver requests more frequently as developers gained more understanding of the requirement, which took effect on January 1, 2015.

Mr. Gordon asked Mr. Stivers if TCAC has denied any exemption requests.

Mr. Stivers stated that TCAC has not denied any exemption requests. He explained that staff has tried to maintain as much accessibility as they can within the waiver process. He stated that he did not know how developers were interpreting the regulation language, which requires units be built accessible, except to the extent that the structural modifications are needed.

Mr. Frerichs asked Mr. Stivers if there could be a hypothetical situation in which TCAC reduced a project's accessibility requirement from 10% to 5% and the local building department was able to waive the remaining 5%.

Mr. Stivers confirmed such an outcome could occur if the project met the hardship provisions described in the building code.

Ms. Boatman-Patterson asked if there was a federal minimum requirement for accessibility.

Mr. Stivers stated that projects funded through Section 504 were subject to federal standards.

Ms. Schur confirmed that projects receiving Section 504 funding were subject to a 5% accessibility requirement.

Ms. Boatman-Patterson asked if tax credit projects were subject to the minimum Section 504 requirements.

Ms. Schur stated that tax credit projects are not subject to the federal minimum requirements because TCAC awards are considered private funds.

Mr. Gordon asked if a developer from the audience could comment on the difficulties of the exemption process. He stated that he understood the process required sponsors to submit a lot of documentation, which staff may not have the expertise to properly evaluate.

An anonymous commenter stated that developers often have timing issues associated with the exemption process. Developers must often discontinue projects if they do not have sufficient funds to make the projects accessible and cannot get a waiver within the necessary time frame. The commenter stated that his firm has working on a number of projects, with the goal of achieving 5% or 10% accessibility. He explained that his firm could not feasibly build certain projects due to a delay in the waiver process perhaps because the executive director of TCAC was traveling. He commented that having the simplicity of the lower percentage was helpful to developers.

Ms. Schur asked the Committee if her firm could set a time to meet with TCAC staff and other stakeholders to create an exemption process that would not require staff to devote so much time to act outside of their expertise and would not result in a blanket reduction of the accessibility requirements.

Ms. Ortega stated that Ms. Schur's request was not unreasonable. She stated that she respected staff's time and effort related to this issue; however she felt staff may be able to develop an alternative to their current proposal.

Mr. Gordon asked Ms. Ortega if she would like to make a motion.

Ms. Ortega asked TCAC's legal counsel, Robert Hedrick, if she could make a motion to remove proposed accessibility reduction from the regulation package.

Mr. Hedrick suggested Ms. Ortega make a motion at a later time to approve staff recommendations relative to the regulation package, except for the provision regarding the accessibility reduction from 10% to 5%. He stated that the provision would be subject of further discussions and brought back to the Committee on a future date.

Mr. Gordon suggested the Committee vote right then on the specific amendment to the regulations and vote later on the entire package without the amendment.

Mr. Hedrick stated that the Committee could first vote on each amendment they wished to make a motion on, then vote later on the entire regulation package as amended by the previous motions.

MOTION: Ms. Ortega moved to remove the accessibility reduction from the package and allow further conversations to occur regarding this issue. Ms. Yee seconded the motion. Mr. Gordon abstained and the motion passed by a roll call vote.

Mr. Gordon invited Mary Ellen Shay to comment.

Ms. Shay stated that she was sole proprietor of the M. E. Shay Company, a real estate market analysis company. She stated that in the last 31 years she prepared over 900 market studies in support of TCAC and CDLAC projects. Ms. Shay explained that she supported a complete evaluation of tax credit resource needs throughout the State of California. She reported that she prepared a brief analysis of the age and household size increases that can be expected over the next 10 years. She predicted the age group between 65 and 74 years old will account for more than 17% of household growth between years 2015 and 2025.

Ms. Shay reported that a few weeks ago the University of British Columbia and University of California Berkeley jointly sponsored a conference regarding retirement and security. She read a quote from the event which stated "Retirement and security is a nationwide problem, but the issue is compounded in California due to the high cost of living. Despite having the eighth largest economy in the world, the State has one of the lowest ranking nationwide for workplace access to a pension or 401K". Ms. Shay concluded that the growing senior population has limited access to resources for retirement.

Ms. Shay requested a doubling of the efforts Ms. Yee and Ms. Boatman-Patterson proposed by creating a statewide allocation plan for all the housing resources based on basic demographics such as age, income and family size. She explained that demographic needs should be tied to the allocation of resources in such a defined way that relevant data is available during the project reviews so that programs can fund projects based on local community needs.

Mr. Gordon invited Alan Greenlee to comment.

Mr. Greenlee stated that he was the executive director of the Southern California Association of Non-Profit Housing (SCANPH), which represented about 490 organizations throughout southern California. He thanked the Committee and staff for their efforts on the regulations over the past nine months. He stated that his organization was committed to working with staff to ensure their participants receive the best regulations possible.

Mr. Greenlee stated that developers in his region have experienced very troublesome and difficult situations involving high development costs and extremely low income populations. He supported TCAC staff's efforts to increase production and leverage but he hoped they would not lose sight of their fiduciary responsibility to maintain deep affordability.

Mr. Greenlee reported that Los Angeles was in need of approximately 500 [It seems that this number should be much higher.] units for extremely low and very low income people based on a study his firm conducted with the California Housing Partnership. He stated that due to a homelessness emergency in Los Angeles County the public agencies in that area decided to devote their limited resources to the extremely low income sectors of the community. He requested that TCAC's regulations mirror these efforts as much as possible.

Mr. Greenlee stated that in Los Angeles County public subsidy funds, which made affordable housing development possible, have been reduced by about 80%. He encouraged staff to pay significant attention to the way the state and federal programs were administered to ensure the most assistance for his community. He stated that his firm would be available to convene a working group with TCAC.

Mr. Greenlee explained that his firm was tracking the progress of a number of elements within their comments. He reported that his firm has asked TCAC staff to provide empirical data related to the proposed policy changes by running scenarios of projects that applied for tax credits due to the proposed changes. He stated that the continued analysis of the impact of the changes was a very important matter.

Mr. Gordon invited Michael Lane to comment.

Mr. Lane stated that he represented the Non-Profit Housing Association of Northern California. He stated that his firm represented more than 750 members, which included the most productive and successful affordable housing developers in the state. He commended the State Treasurer, Mr. Stivers and Ms. Glasser-Hedrick for the process they undertook and for the majority of the proposals they recommended. He commented that the proposed regulations will increase affordable housing production, reduce costs and help preserve public assets by ensuring proper rehabilitation of existing properties that received local subsidies.

Mr. Lane commented that the TCAC's regulatory process was very efficient and thorough. He noted that HCD must undergo a multi-year process to update its Multifamily Program Regulations. Consequently, HCD could not address public

needs in the way that TCAC was able to. He encouraged the Committee to adopt the entire regulation package.

Mr. Lane stated that his firm supported staff's proposal with regard to the Special Needs housing goal. He stated that the policy was very important in directing public resources to people who would be unable find housing in the current market otherwise.

Mr. Lane stated that staff's proposal regarding the tie-breaker provides for adjustments in terms of cost. He noted that his firm made alternate proposals for this section of regulations.

Mr. Lane commented that the SB 377 bill would not have caused a fiscal impact to the State's general fund, yet it was lumped into a group of other tax credit policies. He encouraged the Committee to help developers by explaining to the governor that there was a housing crisis and TCAC was an effective program that leveraged resources. He noted that the TCAC has brought in more than \$1 billion in additional federal funds over 5 years.

Mr. Gordon invited Patrick Sabelhaus to comment.

Mr. Sabelhaus stated that he was the executive director of the California Council of Affordable Housing (CCAH). He stated that he had numerous meetings with TCAC staff and members of the Treasurer's Office to discuss the regulations. He asked the Committee to consider withdrawing two sections of the proposed regulations.

Mr. Sabelhaus explained that there is a lack of efficiency associated with the tie-breaker. This remains a problem because the more soft money a given project receives from local governments the more likely it is to be awarded credits. Mr. Sabelhaus explained that applicants who had relatively less money and were more efficient with regard to voluntarily reductions in the amount of credits they request were more likely to lose in the TCAC competition.

Mr. Sabelhaus stated that CCAH and the Treasurer's staff agreed during their discussions to revisit the tie-breaker policy in the near future. He noted that Chief of Staff, Collin Wong-Martinusen, offered to organize a meeting for the development community to vet the policy further.

Mr. Sabelhaus stated that he was concerned about the provisions in the regulations that limited the amount of work that could be done on rehabilitation project in the rural set aside and geographic regions. He stated that the provisions would not help salvage the existing affordable stock, which was financed by the 4% and 9% tax credits and other programs such as the United States Departments of Agriculture (USDA) and HCD.

Mr. Sabelhaus explained that under staff's proposal many projects, particularly those over 20 years old, would not receive the rehabilitation work they needed. He estimated that more than half of the projects in the last two funding rounds

were acquisition and rehabilitation projects. The projects were to be rehabilitated to the extent that they would remain in the affordable stock for 40 or 50 years.

Mr. Sabelhaus stated that in the event of a transfer the proposed regulations required that for the first 2 years, the seller of a project must set aside the portion of the sale proceeds needed for rehabilitation work based on a capital needs assessment in a capitalized reserve. He reported that last year there were projects with 40 units that were finance by USDA. The projects were 30-35 years old and in desperate need of acquisition and rehabilitation. The excess sale proceeds for one of the projects was between \$350,000 and \$375,000. Mr. Sabelhaus predicted that if the same situation occurred under the proposed regulations the seller would have to leave all excess proceeds in a capitalized reserve. Ultimately, the seller would have nothing to show for his efforts over 25 or 30 years.

Mr. Sabelhaus commented that he understood staff may find it difficult to manage this policy because every project is different. Some projects located in high cost areas receiving extreme amounts of subsidies have generated significant profits, which owners have taken away from the projects. Mr. Sabelhaus stated that TCAC may be able to justify imposing a policy whereby project owners must capitalize a portion of sale proceeds into a reserve for work that will be needed during the first 2 years. He pointed out that there may be situations in which project owners do not take a significant amount of sale proceeds from the project.

Mr. Sabelhaus stated that if staff's proposal was approved, owners may choose not to sell their projects because there would be no benefit over their 30 years of managing it. He asked that the Committee withdraw staff's proposal regarding transfer events.

Mr. Gordon stated that the 9% tax credit program should be primarily focused on new construction projects. He stated that setting the soft cap at 20% was a reasonable accommodation. He stated that there was a waiver provision in place with regard to the back-end equity issue. He asked if TCAC staff would have the ability to waive the rehabilitation requirements under the proposed regulations if they encountered a situation in which all the equity was removed from a project.

Mr. Stivers stated that TCAC may waive the rehabilitation requirements if there is no net equity. To the extent that there is insufficient net equity to complete the 2-year repairs TCAC could modify the requirement so it equals the amount of equity that is there. In general, TCAC would request that the rehabilitation is done before equity distributions occur. Mr. Stivers stated that developers can earn money at the front end of their projects through developer fees and at the back end if there is equity. He stated that there is no guarantee of the back end equity.

Mr. Stivers stated that the majority of projects probably have no back end equity, according to community comments, but when equity exists it should be applied first to the deferred maintenance before it is distributed to project owners.

Mr. Gordon requested that the Committee not accept either of the proposed amendments to the regulations and move forward with the regulation package as it is.

Ms. Yee reiterated that she was concerned about three areas of the regulations primarily due to the lack of information. She stated that she hope staff would engage these areas further so the Committee could be more informed. She commended the housing agencies for their coordination in bringing substantial information together as it allowed TCAC members to make better decisions.

Ms. Yee stated that she was prepared to support the amendments; however as staff moved toward more specific discussions about the tie-breaker it was important to fully consider the impact in a transparent way. She commented that it was very hard to track this issue. She stated that staff had a great opportunity to educate people regarding the confines under which TCAC operates.

Ms. Yee stated that she was concerned about the rule regarding the 20% soft cap provision for acquisition and rehabilitation projects. She stated that this type of housing need represents a great challenge in the rural areas of the State. She suggested that there should be more open conversations about how TCAC prioritizes funds for all project types.

Ms. Yee stated that she supported the Special Needs housing provisions yet she had specific concerns about staff's proposal. She asked how TCAC would award different project categories and developer types given their limited resources. She suggested staff may need to review certain aspects of the point system.

Ms. Yee requested a stated commitment from staff that they will pursue open conversations for the public and interested parties where they can be informed by any data staff can provide. She also requested the outcomes of the conversations be transparent to the extent that board members will know what work has been done and which concerns were addressed when the next TCAC meeting takes place.

Ms. Yee stated that she felt some frustration during discussions about efficiency in the program. She stated that even with companies working together, TCAC may not be able to find a good measure of efficiency although the program may be able to improve future housing production.

Ms. Yee stated that TCAC should try to determine how to draw additional non-tax credit funding to supplement TCAC's limited resources. She explained that staff's responsibility is to produce information about project feasibility as clearly as possible. Staff can then decide if they should focus on additional public funds, soft leverage funds or private investments.

Mr. Sabelhaus stated that TCAC should limit the amount of 9% funding for rehabilitation projects if there were substitute funds available. He explained that developers thought additional state tax credits would become available under AB 35; however the bill was not approved. The proposed increase in state credits

would have provided enough funding to salvage projects that were over 20 years old and needed to remain in the affordable housing stock. Mr. Sabelhaus stated that TCAC would have gained another 55-year regulatory agreement beyond the current agreements in place for those projects.

Mr. Sabelhaus requested that the 20% limitation not be imposed that year. He suggested staff work with the governor's office to make additional state tax credits a part of next year's budget.

Ms. Ortega predicted that conversations regarding the policy change would likely continue therefore she did not see the benefit of adopting the change at that time. She stated that she did not know what the marginal improvement would be over one year if the proposed change was approved. Ms. Ortega suggested staff was attempting to make policy choices through their individual proposals. She suggested TCAC staff initiate further conversations regarding issues like housing type goals and tie them into their larger policy goals. She supported removing the proposal as Mr. Sabelhaus requested.

Ms. Boatman-Patterson asked if there was an existing soft cap on the 9% credits for rehabilitation projects.

Mr. Stivers stated that the proposed soft cap was completely new. He stated that there was currently no cap for acquisition and rehabilitation projects when applying for credits. Historically, 15% to 20% of projects built were rehabilitation. Mr. Stivers stated that there has been a recent spike in the number of rehabilitation projects. Approximately 35% of the projects reviewed in the 2015 First Round were rehabilitation. The volume was slightly less in the Second Round.

Mr. Stivers stated that there was an inherent advantage for rehabilitation projects under the current tie-breaker policy. He explained that the tie-breaker is driven by public funds. In an era where new public funds are scarce, projects that recycle old public funds perform well in TCAC's competition.

Mr. Stivers reported that the success rate for rehabilitation projects in the First Round was 85%. For new construction project the success rate was 50%. The success rate in the Second Round was 70% for rehabilitation projects and 45% for new constructions. Mr. Stivers concluded that rehabilitation projects had a 25% to 35% advantage in the TCAC competition largely due to the recycling of public funds.

Ms. Boatman-Patterson stated that even though TCAC is focused on new construction projects, the current trend suggested a greater number of rehabilitation projects were moving forward.

Mr. Stivers stated that there was a need for both housing types. He agreed with Mr. Sabelhaus' comment that not all projects were feasible in the 4% program. He stated that the proposed regulation changes could help some of these projects. He predicted there would still be a significant amount of 9% credits available for

rehabilitation projects while TCAC maintained its focus on new construction projects.

Mr. Stivers agreed with Ms. Ortega's comment that changing the policy year after year would not be beneficial. He explained that the intent of staff's proposal was to impose a cap for the foreseeable future. He stated that 20% cap was in line with the historical average but the not the current average.

Ms. Ortega asked Mr. Stivers if staff could address the recycling advantage issue.

Mr. Stivers stated staff would review that issue as part of the continued tie-breaker discussions. He explained that changing the recycling advantage would be very controversial because rehabilitation projects could be disadvantaged even more than they would under the 20% cap. Under the current proposal, rehabilitation projects would maintain their recycling advantage, but a 20% cap would be imposed.

Ms. Ortega asked Mr. Stivers to comment regarding a higher cap for acquisition/rehabilitation projects.

Mr. Stivers stated that the historical average has been 15% to 20%. The proposed percentage was 15% at first then later increased to 20%. He explained that staff was concerned during the First Round when the percentage increased to 35%. Mr. Stivers noted that during the public comment period TCAC received a fairly balanced number of comments supporting and opposing the 20% soft cap.

Ms. Ortega suggested staff should provide more data driven analysis based on past activity. She stated that varying comments driven by developer activity do not help TCAC predict the outcome of the use of tax credits.

Mr. Stivers stated that it was impossible to predict how a cap or lack thereof would affect the outcome of the use of credits next year. He explained that staff would have skipped over some of the rehabilitation projects most likely in favor of new construction projects during the 2015 First Round.

Mr. Stivers stated that the proposed limit was a soft cap, which would allow staff to seek other types of projects after reaching the imposed limit on rehabilitation projects. If other types did not exist within a given set aside or geographic region, staff would continue funding rehabilitation projects.

Ms. Ortega stated that if TCAC intended to hold further discussions about certain items in the regulations, board members should decide what those items were and remove them from the regulation package. She commented that it would not make sense to adopt the current package if it would be under consideration for change immediately after the adoption.

Mr. Stivers stated that he would continue to work on the issues as directed by the Committee though he predicted there would be no agreement regarding the three main issues discussed that day. He stated that the volume of comments regarding

the rehabilitation goal and Special Needs policy were almost equally divided with half in favor of the changes and half opposing the changes. He predicted that there would be no consensus regarding the tie-breaker policy either.

Mr. Stivers stated that within the current proposals the most commented piece was the size factor, which was largely opposed. He reported that staff also received a number of comments regarding cost efficiency. He noted that sponsors who proposed greater cost efficiency were not opposed to the size factor.

MOTION: Ms. Ortega moved to remove the 20% soft cap on acquisition and rehabilitation projects from the package and allow further conversations to occur regarding this issue. Ms. Yee seconded the motion. Mr. Gordon opposed the motion. The motion passed by a roll call vote.

MOTION: Ms. Ortega moved to adopt the regulation package minus the disability reduction and 20% cap on acquisition and rehabilitation projects and including the three technical amendments previously adopted. Ms. Yee seconded and the motion passed unanimously by a roll call vote.

Ms. Yee commended Mr. Stivers and his staff for their efforts in preparing the regulations. Though many concerns were raised, there were also many improvements built into the regulations. Ms. Yee thanked Ms. Boatman-Patterson for her comments about state agencies coordinating to produce information and data. She encouraged the agencies to bring forth more current data so board members could better understand their experience in the areas that were discussed.

7. Public comments

No public comments

8. Adjournment.

This meeting adjourned at 1:37 p.m.