

CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE
Minutes of the December 14, 2016 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 1:00 p.m. Also present: Alan LoFaso for State Controller Betty Yee; Eraina Ortega for Department of Finance Director Michael Cohen; Anthony Sertich for California Housing Finance Agency (CalHFA) Executive Director Tia Boatman- Patterson; Russ Schmunk for Department of Housing and Community Development (HCD) Director Ben Metcalf; and County Representative Santos Kreimann.

City Representative Lucas Frerichs was absent.

2. Approval of the minutes of the November 16, 2016.

MOTION: Mr. LoFaso moved approval of the November 16, 2016 minutes. Ms. Ortega seconded and the motion passed unanimously by a roll call vote.

3. Executive Director's report.

Executive Director Mark Stivers reported that there has been some concern that projects awarded in 2016 will not be able to close on their financing loans before the TCAC deadlines. He explained that staff included a provision in the proposed regulations, which would give him authority to waive the letter of intent deadline for the 2016 Second Round projects. Normally, applicants must demonstrate they have an investor committed within 90 days of receiving their award and they must close on their loan financing within 180 days or 194 days. Mr. Stivers clarified that he would waive only the 90-day letter of intent deadline so that applicants would have additional time to secure their investors.

Mr. Stivers announced that a closing deadline recently passed on December 5th and all projects had met the deadline. He stated that there was another closing deadline coming up on December 19th. He explained that he would not extend any deadlines, but would wait to see how many applicants met the December 19th deadline.

Mr. Stivers stated that it was somewhat unprecedented for the credit pricing to drop to \$0.15 within a week, which puts the financing for many projects in jeopardy. He noted that staff would be mindful about this issue as they urged applicants to close their loans and begin construction as soon as possible.

Mr. Stivers reported that this year the legislature approved a bill, giving TCAC the ability to issue fines for noncompliance, particularly when the Internal Revenue Service (IRS) is no longer involved. He explained that the regulation changes included language to that effect, but it was staff's intention to come back with a second procedure that included a schedule of fines. Mr. Stivers reported that staff put together a draft of the full schedule of fines and intended to publish it for public comment by the end of the week. He stated that there would be a comment period through January 31st and then TCAC would bring their final recommendation to the March meeting.

Mr. Gordon extended his thanks to Lisa Vergolini and congratulated her on retiring from her position as Deputy Executive Director of TCAC.

Mr. Stivers also thanked Ms. Vergolini for her direction as he transitioned into his role as Executive Director of TCAC. He also congratulated Mr. Zeto on his new position as Deputy Executive Director for TCAC.

4. Discussion and consideration of the 2016 Applications for Reservation of Federal Four Percent (4%) Low income Housing Tax Credits (LIHTCs) for Tax-Exempt Bond financed Projects.

Development Section Chief, Anthony Zeto, stated that there were a total of 25 projects that have been reviewed for compliance with federal and state regulations. He recommended them for approval.

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

5. Discussion and consideration to increase the existing Reservation amount of Federal Four Percent (4%) Low Income Housing Tax Credits (LIHTCs) for a Tax-Exempt Bond Financed Project as allowed under TCAC Regulation Section 10322(j).

Mr. Zeto reported that the project had received a prior tax credit reservation. He explained that some of the project costs increased, which prompted staff to seek Committee approval for additional credits.

MOTION: Ms. Ortega moved approval of staff recommendations. Mr. LoFaso 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, Sections 10302 through 10337 revising Allocation and Other Procedures.

Mr. Stivers stated that the new regulation change package, if adopted, will be in effect for the 2017 calendar year. He explained that the proposed changes were published in September and staff held a 45-day public comment period through the end of October. During this period staff also held 4 public hearings throughout the state. Mr. Stivers reported that staff issued a revised set of proposals on December 1st.

Mr. Stivers reported that he submitted a memo to the Committee, which included some last minute changes he wished to suggest. The first change would update references to the National Green Building Standard, which staff will add as another option for applicants to use.

Mr. Stivers stated that he would like to withdraw the proposed changes to the tie-breaker relating to assumed loans and replace them with a housing type goal for rehabilitation projects of 30% of the credits available in the rural set aside only.

Mr. Stivers confirmed that this topic was discussed last year in the regulations changes. He stated that this is a higher percentage than discussed last year. He suggested that the current proposal would be a better approach than the assumed loan provision to balance out the needs of new construction and rehabilitation projects where rehabilitation projects currently have an advantage.

Mr. Stivers recommended withdrawal item 83 of the proposed regulation changes, which requires resyndication projects to demonstrate a rehabilitation need of \$15,000 per unit. He stated that his recommendation was based on conversations with participants and new challenges that will arise in the credit markets next year.

Dara Schur stated that she represented Disability Rights California, a statewide advocacy agency representing individuals with disabilities. She stated that she appreciated TCAC's receptiveness to her concerns last year regarding disability access provisions. She stated that she wished to address these concerns again.

Ms. Schur stated that her firm supported several provisions in the current proposed regulations as noted in their most recent letter to TCAC. She noted that her firm changed its position on one provision after meeting with Mr. Stivers and the firm's accessibility experts. She stated that there are still a number of concerns in need of addressing to ensure accessibility for the disabled community.

Ms. Schur stated that her firm had no objections to the new construction requirements as they seem to be implemented well and further the State's obligation under the Americans with Disabilities Act (ADA). However, she wished to propose a few technical amendments to this area.

Ms. Schur stated that rehabilitation projects accounted for 73% of projects funded with 4% tax credits last year. She stated that cutbacks to accessibility requirements and a significant amount of waivers to those requirements have had a major impact on housing for the disabled. She stated that obtaining affordable housing was nearly impossible and even more difficult for those who need fully accessible units because they use wheelchairs or those who need specific features allowing deaf or blind tenants to fully access their unit.

Ms. Schur stated that she was concerned about cutbacks on the requirements for accessibility in rehabilitation projects. In addition, she wished to propose some clarifications, which may prevent misunderstanding during the implementation of the requirements. Finally, she suggested there was a significant need for increased monitoring and implementation provisions to ensure accessibility standards were being met.

Ms. Schur noted that her firm's experience with this issue was informed by its work last year in Los Angeles. She explained that her firm entered into a significant settlement with the city of Los Angeles, which resulted from litigation associated with a complaint from the Department of Housing and Urban Development (HUD) against the city. The complaint alleged that the city failed to ensure its funded projects met the required accessibility standards. Ms. Schur reported that the city was currently in the process of implementing a 10-year 4,000-unit rehabilitation/retrofit and new construction project to ensure full accessibility in accordance with federal law.

Ms. Schur stated that during the course of implementing the settlement her firm has observed projects funded by TCAC where the architects did not understand the new requirements, or the city building department was not informed of the new requirements, or there were issues with the manner in which the requirements were implemented. She stated that new construction section in the regulations states that TCAC can waive certain requirements of 11B if necessary. Ms. Schur stated that the language was incorrect because only the California Building Standards Commission is permitted to waive the 11B requirements. She clarified that TCAC may waive its own requirements for compliance with 11B.

Ms. Schur commented that it is important to clarify this section of the regulations to alleviate confusion among building code departments and project funders. She explained that developers who are not informed of accessibility standards believe TCAC has authority to waive 11B requirements entirely.

Mr. Stivers stated that the regulations allowed TCAC to issue waivers of accessibility requirements for rehabilitation projects, but not for new construction projects. In addition, the regulations specify that the Executive Director of TCAC may approve a waiver to paragraph K, which is TCAC's own requirement. Mr. Stivers stated that the regulations do not indicate TCAC may waive 11B requirements.

Ms. Schur stated that she misspoke earlier and wished to clarify her comments. She explained that the proposed language states that 11B was amended to require 10% of units with mobility features and 4% of units with communications features. Ms. Schur suggested staff add language to clarify that TCAC is not amending the requirements of 11B. Instead TCAC is only amending its requirement of 10% of units with mobility features and 4% of units with communications features.

Mr. Stivers stated that his staff would review the language and make revisions as Ms. Schur requested.

Charles Pick, an architect with BASIS Architecture & Consulting, stated that his firm had worked on many TCAC rehabilitation projects. In addition, his staff was involved in prior conversations with Mr. Stivers and Ms. Schur.

Ms. Ortega asked Mr. Pick if he thought the technical change suggested by Ms. Schur was needed.

Mr. Pick stated that the change was not needed in this regard. He stated that he would like to defend the original language in the proposed revisions to the extent possible.

Mr. LoFaso asked Mr. Pick to comment on Ms. Schur's concerns about misunderstanding of accessibility requirements within the affordable housing community.

Mr. Pick agreed there was a lot of confusion in the community. He stated that his firm must educate nearly everyone involved in project development; however he did not believe the confusion was due to officials not knowing which codes to apply. He explained that the confusion was due to applying 11B standards to projects that were actually [only] required to comply with 11A standards.

Mr. Pick explained that since 2014, his firm and other architectural firms have used 11B as a design standard to represent [TCAC's] accessibility requirements (which exceed the California Building Code and the applicability of 11A) as a voluntary set of improvements. That is technically the only way these can be interpreted from a building code standpoint. He stated that the architect makes voluntary accessibility improvements not required by the 11A because they are required by TCAC. He noted that his firm now includes an explanation of this concept in its plans to alleviate confusion among project participants.

Ms. Schur suggested that Mr. Pick was addressing rehabilitation projects because the regulatory language regarding new construction projects clearly states that 11B is applicable.

Mr. Pick commented that the proposed language was clear although there was break between the rehabilitation and new construction descriptions. He noted that the break was necessary to help the community in the development of their projects.

Mr. Stivers stated that he was willing to make the small revision to the new construction language as Ms. Schur requested.

Ms. Schur stated that her firm would agree to the changed language of the rehabilitation provisions provided some additional language was added. She explained that the previous version of the provisions stated that developers must comply with 11B completely. Ms. Schur stated that she was concerned about older buildings and those built before the Fair Housing Act was implemented because these buildings can be extremely difficult and expensive to make accessible.

Ms. Schur stated that her firm was willing to accept the modified language, which states that owners do not need to build units beyond the 10% and 4% adaptable. In addition, the project needed only to provide one set of common areas and one set of accessible paths of travel between the units and that set of common areas. She concluded that her firm was not opposed to the proposed language or the use of the language as a design standard provided staff added a few modifications.

Ms. Schur suggested other common areas and paths of travel be made accessible when feasible in more recent buildings, which should include the basic accessibility features required by the Fair Housing Act. She also suggested that the regulations clearly state that accessibility standards required by other funding sources will not change regardless of TCAC's requirements.

Ms. Schur recommended staff revise its standards to be more consistent with HUD language, which specifies that projects be built with accessibility features up to maximum extent feasible.

Mr. Gordon commented that he was extremely worried that the word "feasible" as stated in Ms. Schur's letter may be a potential cause for lawsuits. He stated that even if lawsuits did not occur, the prophylactic effect would add significant cost to project development. He asked Ms. Schur to explain who will determine the feasibility of accessibility standards other than a charter of fact that would lead to increased building costs.

Ms. Schur suggested staff implement the basic HUD standard, which requires that any project receiving HUD funding must provide accessibility features unless they cause an undue burden and where there is an undue burden the project must provide the features to the maximum extent feasible. She stated that she was willing to explore other language if the Committee did not wish to adopt the HUD standard. She noted that the building departments would usually determine whether a particular feature would cause an undue burden on a project. She stated that TCAC staff has also been able to waive accessibility requirements for certain rehabilitation projects.

Ms. Schur stated that many architects in California have either not been trained in accessibility law or their training is outdated. This is one of the reasons the legislature created a program for Certified Access Specialists (CASps). She recommended that anyone seeking a waiver from TCAC provide with a CASp certification attesting that the project architect is working with someone trained in accessibility provisions.

Ms. Schur suggested that applicants follow the process implemented by Mr. Pick's firm, which is to state up front that their project must comply with 11B standards or must be reviewed under 11B standards during rehabilitation. She stated that building departments routinely review projects under 11A standards because they have no way of knowing when additional provisions are applicable.

Mr. Pick disagreed that California architects do not have expertise regarding 11B standards. He explained that the State has one single continuing education requirement, which specifically requires architects to receive disability access training as continuing education every two years. In addition, Chapter 11A and 11B are unique features of the California Building Code as opposed to the international code. Mr. Pick argued that California architects have expertise regarding the subtleties of these codes. He explained that architects must certify to TCAC as well as project sponsors, investors and lenders that minimum construction standards are met and projects comply with all applicable laws.

Mr. Pick commented that introducing another party to a decision making process would be disastrous. He explained that two issues came up during his prior dealings with two projects where a CASp was involved. First, there are not many CASps available to consult. Another issue is that CASps make mistakes as they attempt to interpret a substantial volume of technical [building] code language code which is actually contradictory in some of its details.

Mr. Pick reported that he possessed a CASp report for a property built after the Fair Housing Act was implemented. He stated that the report conveyed a series of errors in judgment made by the CASp. Mr. Pick explained that projects already have building officials, project sponsors, counsel, architects and civil engineers involved and each party has a distinct liability to assign someone to ensure the projects are scoped out, documented, budgeted and permitted with 180 days. He commented that introducing yet another party to the process would be impractical.

Ms. Ortega asked if there was any problem with the sentence in the proposed language, which states that projects with particular state, federal or local funding sources may be required to meet additional accessibility requirements.

Mr. Stivers stated that there was general agreement regarding the language.

Ms. Ortega asked if placing the sentence in regulations would trigger the HUD requirements for any project receiving federal funds.

Mr. Pick stated Section 504 clearly states that federal standards apply to HUD and Rural Development projects. He stated that those involved in the project rehabilitation have extensive experience meeting the requirements. He commented that it is the architect's job to know which obligations are attached to each project funding source.

Mr. Gordon stated that the sentence Ms. Ortega referenced was a restatement of existing law and therefore did not expect anyone to disagree with it.

Ms. Ortega suggested that if staff included the sentence in the regulations they would not need to restate the federal standard for projects receiving federal funds. She stated that the federal standard would become automatic.

Mr. Gordon agreed with Ms. Ortega's conclusion.

Ms. Schur stated that Section 504 requirements are much more extensive than the requirements described in the paragraph referenced by Ms. Ortega. She stated that she appreciated the suggestion to include the sentence Ms. Ortega reference to alleviate confusion in the community. Mr. Schur explained that rest of the paragraph was designed to create a TCAC requirement that sponsors make improvements beyond one set of common areas or path of travel whenever it is feasible.

Mr. Stivers explained that staff was trying to simplify its waiver process with its provision regarding common areas. He stated that certain areas like a second laundry room or common room did not need to be made accessible nor would the owner need a waiver of accessibility for those areas. He explained that Ms. Schur's proposal that applicants must add accessibility features whenever feasible would cause TCAC to return to its original volume of accessibility waivers.

Mr. LoFaso asked Ms. Schur to explain more about the HUD guidance, which allows government staff to decide how to apply the undue administrative burden standard.

Ms. Schur stated that 11B and the applicable federal regulations state that the local building official would normally make the decision. She stated that Mr. Stivers and his staff can make the decision to the extent that TCAC requires a certain standard such as the 10% accessibility standard.

Mr. LoFaso stated that there are instances where the HUD funds drive HUD requirements for a given project as Ms. Ortega indicated. He stated that he was under the impression HUD officials used their training resources to determine whether an undue administrative burden exists.

Ms. Schur stated that the local building departments normally determine whether there is an undue burden and issue a waiver accordingly.

Mr. LoFaso stated that the Committee does not know how staff will take on the perspective of the building officials nor can it foresee the consequences of importing the HUD standard. Ms. Schur stated that there was currently very little data available to her firm and she did not know what circumstances would trigger a waiver. She offered to convene with TCAC staff and her accessibility experts to review a representative sample of projects to better understand which features were being waived and to then develop some specific standards. She stated that her firm would also assist in developing technical assistance materials such as a training webinar for developers.

Ms. Schur stated that she understood there are situations where waivers are appropriate; however she was concerned that the current TCAC standards required much less accessibility than those associated with a number of other sources.

Mr. Pick disagreed with Ms. Schur's statement about the TCAC standards. He explained that the federal requirements of Section 504 have been the primary standard for developers. He stated that the TCAC requirements adopted in 2014, and increased in 2015, far exceeded the federal standard.

Ms. Schur stated that for rehabilitation projects TCAC may waive requirements for certain adaptable units, common areas and paths of travel through exemptions, which do not exist in the federal regulations or through the application of 11B standards.

Ms. Schur acknowledged that Mr. Pick disagreed on her proposal to include a CASp requirement; however she felt that additional expertise was needed to ensure compliance with accessibility standards. She stated that she would discuss alternate solutions with staff if using a CASp was not a good approach.

Ms. Schur confirmed that most building departments will assume that a given building is subject to 11A requirements unless they are told otherwise. For this reason her firm requested that TCAC provide specific guidance related to other requirements.

Ms. Schur referred to the proposals in her letter to TCAC. She stated that TCAC currently requires architects to certify that their projects are in compliance with 11B standards, but TCAC does ask architects to identify which units have accessibility features. She suggested that the details about accessible units be added to the TCAC website to assist people who are seeking affordable accessible units.

Ms. Schur stated that some years ago TCAC adopted standards that mirrored federal requirements for prioritizing accessible units. She explained that under federal standards a person who needs the accessibility features of a unit takes priority to rent the unit over others on the waiting list who do not need the features. Ms. Schur stated that even though TCAC has adopted the federal standards, the agency has no monitoring procedures to enforce or document that project owners are complying with the standards.

Mr. Gordon stated that the Committee has not shown strong support for the proposals in Ms. Schur's letter. He asked Mr. Stivers when the Committee might revisit the proposals again. He asked Committee members if they preferred to vote on the proposals right then.

Mr. Stivers stated that regulation changes are typically made once each year. He explained that staff's initial proposed regulation changes are published in the fall and the final proposed regulation changes are adopted by the Committee in the winter. He noted that the Committee has authority to adopt regulations changes at any time of the year.

Ms. Ortega stated that she agreed with staff's recommendation regarding common areas and paths of travel. She stated that she did not object to staff adding the suggested language to the regulations. She stated that she supported staff's recommendation to reduce the requirements in an effort to make projects more cost effective.

Ms. Ortega stated that she could not support or oppose the issue regarding TCAC monitoring because she has not received sufficient information about the existing protocols. She suggested Mr. Stivers provide the Committee with additional information and recommendations.

Ms. Schur stated that she would be happy to discuss the matter with Mr. Stivers.

Mr. LoFaso suggested staff engage the community regarding education in the architectural nuances. He stated that staff should be charged with setting goals to help close the gap in training and improving trust among program participants.

Mr. Stivers confirmed that he would continue working with the community. He stated that giving staff more monitoring duties would be a difficult task; however there may be an opportunity for staff to acquire the certification Ms. Schur described.

Mr. Gordon confirmed that Ms. Ortega has recommended adding one sentence as an amendment to the regulations, which states that projects with particular state, federal or local funding sources may be required to meet additional accessibility requirements. He asked TCAC legal counsel, Robert Hedrick, to comment.

Mr. Hedrick referred to Ms. Schur's letter. He confirmed that Committee members were in agreement regarding the technical changes on page 3 and the sentence on page 4. He suggested the Committee make a motion to amend staff recommendations to include the changes on page 3 and the sentence from page 4. Assuming the motion passes, the Committee may discuss other topics and make additional amendments based on those discussions. He stated that the Committee may take up the entire regulation package as amended in their final vote.

Mr. Gordon confirmed that staff has made a commitment to continue working with Ms. Schur's firm. He stated that if other changes are recommended before next year, the Committee would be amenable to a supplemental regulation package upon agreement of the Committee members.

Mr. Pick commented that the proposed regulatory changes were in no way intended to reduce the amount of accessibility improvements to projects. Rather the changes were intended to normalize a very complex process, which must be carried out quickly.

MOTION: Ms. Ortega moved to amend staff recommendations to include the sentence on page 4 and the technical amendment on page 3 as discussed and described by Mr. Hedrick. Mr. LoFaso seconded and the motion passed unanimously by a roll call vote.

Mr. Gordon confirmed that the adopted amendments will be put forward in the final vote on the regulations to be adopted that day.

Mary Ellen Shay from the California Association of Housing Authorities (CAHA) stated that she wished to comment regarding an aspect of the tie-breaker related to seller carryback financing for public housing agencies. She explained that CAHA opposed the regulatory changes because they negatively affect the ability of public housing authorities (PHAs) to rehabilitate or rebuild their existing housing stock, which is among the oldest and most deteriorated low-income housing in the state.

Ms. Shay reported that for years PHAs have used their land as a contribution to tax credit projects like other public entities including California cities and counties. She stated that TCAC has proposed to disallow this practice, which would make it nearly impossible for PHAs to compete in the TCAC application process because their tiebreaker scores would be too low and therefore not competitive.

Ms. Shay stated that her firm disagrees with staff's reasoning for the proposed change. She explained that TCAC hopes to encourage new construction as opposed to rehabilitation when in fact many of the public housing projects are in severe need of rebuilding. She stated that TCAC also claims that allowing public agencies to contribute their resources to rehabilitation of public housing projects creates unfair competition for the nonprofit sector. She stated that her firm rejects the arguments presented by TCAC.

Ms. Shay stated that TCAC limits the use of seller carryback financing for the private sector because it is concerned about problems in their proposed financing schemes and not because it is not a worthy use of public funds and land to redevelop public housing. She stated that punishing the public sector because of these concerns would cause a great disadvantage to public housing residents, many of whom are at risk of being permanently displaced from the deteriorating housing stock.

Ms. Shay stated that the housing stock was built 60 or 70 years ago. She explained that much of it was built to low standards in the first place and cannot be fixed. Ms. Shay stated that it would be self-defeating to reject the ability of a public agency to invest its own funds into a project that may not otherwise become financially feasible.

Mr. Stivers commented that most projects reviewed by TCAC are meritorious and his staff is charged with allocating credits among very worthy projects in a competitive system. He explained that when PHAs contribute land or improvement value to a project, TCAC still recognizes that contribution as a funding source and encourages the applicant to make the contribution to the project. He stated that there is a concern about whether or not the applicant will receive tiebreaker credit for their contribution.

Mr. Stivers stated that appraised value is latent and does not have the same value as real money invested into a project. He noted that TCAC is concerned about fair competition. He explained that under the current regulations a non-public entity cannot receive tiebreaker

credit when it uses a seller carryback for a rehabilitation project whereas a PHA may receive tiebreaker credit for the entire seller carryback because it is from a public source.

Mr. Stivers stated that the rehabilitation of existing nonprofit or for-profit projects are no different from PHA projects. He suggested each entity should be treated equally. Mr. Stivers stated that TCAC also gives tiebreaker credit to projects receiving rental assistance. He explained that a lot of PHA projects have rental assistance committed. He suggested that rental assistance is probably given somewhat disproportionately to PHAs in part because PHAs control the allocation of those resources.

Mr. LoFaso asked Mr. Stivers if there is an exception in the provisions related to seller carryback and land donations.

Mr. Stivers confirmed that there is an exception in the provisions; however it is not applicable to rehabilitation projects. He explained that if land was donated to benefit a new construction project TCAC would give seller carryback credit for the value of a land seller carryback only.

Ms. Ortega commented that she was sympathetic to the issues raised by Ms. Shay; however she was persuaded by staff recommendations to incentivize new construction and encourage fair competition among similar projects.

Mr. LoFaso stated that in reviewing the regulations he found it frustrating that staff focuses primarily on tactical rules associated with allocating credits and secondarily on the associated consequences. He stated that TCAC should have a better understanding of its decisions in terms of how they affect the housing stock.

Mr. Stivers stated that when TCAC makes a change to the regulations the result is a change not only to the issue in the regulations but also to behaviors associated with the [revised] regulation. For example, applicants will seek others funding sources to improve their tiebreaker if they do not receive credit for the seller carryback. Mr. Stivers commented that it is very difficult to predict the outcome of the changing the tiebreaker policy. He suggested staff review allocations from the previous year and run them through a new tiebreaker formula in order to see the potential impact.

Mr. Stivers stated that he could not predict future impact with any certainty because staff does not know which applications they will receive nor do they know how the public will react to policy changes.

Mr. LoFaso stated that it seems like there is a lot of stock in need of rehabilitation. He stated staff should have a better understanding of real world impact as the Committee makes decisions that will have systemic implications on rehabilitation.

Mr. Stivers stated that he would run an analysis of 2016 against 2017 data and report back to the Committee. He noted that the pool of applicants will not be the same in each year; however he may be able to document trends over time.

Mr. Gordon stated that he supported staff recommendations. He advised Ms. Shay that the Committee would not provide enough votes to support her request.

Hubbis Fabian stated that she was a resident of Sycamore Apartments. She thanked Mr. Stivers and the program LifeSTEPS for the tools and services they have provided. She stated that in 2010 her family lost its business and was in need of housing. Ms. Fabian was very grateful when she received keys to her new unit at Sycamore Apartments. She stated that her family now has an affordable and secure place to live. In addition, LifeSTEPS has connected her with scholarships to assist her with continuing education. The program has also provided educational workshops and school supplies to her children. Ms. Fabian thanked Mr. Stivers and LifeSTEPS again for making a difference in her life.

Doris Gibson stated that she was a resident of Vintage Woods Senior Apartments. She thanked Mr. Stivers for his support of extended resident services. She explained that the services provide benefits such as training with computers and regular nurse visits. She stated that these services are very important to the senior community.

Darren Bobrowsky from USA Properties Fund stated that he wished to discuss Item 84 of the proposed changes. He stated that USA Properties is a developer of affordable housing in California. The firm has developed nearly 11,000 units for about 90 properties throughout the state including the properties where Ms. Fabian and Ms. Gibson reside. Mr. Bobrowsky stated that his firm believes providing resident services at the properties is the right thing to do even though the firm is not required to provide services.

Mr. Bobrowsky requested the Committee withdraw Item 84, which requires project owners to restart resident services upon resyndication of their property. He explained that owners are facing turmoil in the current tax credit market and the requirement to provide resident services will reduce the loan amount for properties by a range of \$250,000 to \$500,000 depending on the type of services provided.

Mr. Bobrowsky explained that when owners are required to provide resident services it is underwritten above the line in operating expenses, which lowers their loan amount. He stated that the reduction of \$250,000 to \$500,000 can often make a difference in whether or not a building is rehabilitated or resyndicated.

Mr. Stivers agreed that added services, which would not have been provided otherwise, would increase the owner's operating expenses and reduce their mortgage amount. He explained that staff proposed Item 84 based on the indication that services in general are a benefit to tenants. He stated that while TCAC does not require services for every project, they are still beneficial to tenants particularly where they existed in the past.

Mr. Stivers reported that TCAC expanded its waiver provisions to state that if a project has cash flow of less than \$20,000 per year during the last 3 years, TCAC may grant a waiver of the service requirement. He stated that services hold great value and increasing costs for services is beneficial to TCAC residents.

Ms. Ortega asked Mr. Stivers how long services are typically in place.

Mr. Stivers stated for resyndication projects the services were previously required for 10 years. He noted that project seeking resyndication may not do so until their 15th year in the

TCAC program. He explained that the service requirement for many resyndication projects could have lapsed 5 years ago or potentially more.

Mr. Stivers stated that under the proposed regulations applicants seeking new tax credits must agree to provide services for 15 years, which is consistent with the current service requirements.

Ms. Ortega asked Mr. Stivers to confirm that not all resyndication projects had prior service requirements.

Mr. Stivers confirmed that not all resyndication projects had prior service requirements. He explained that projects were likely to have service requirements if they originally received 9% credits whereas projects that received 4% credits were less likely to have a service requirement.

Mr. Bobrowsky stated that he did not oppose social services. He reiterated that it was not a good time to add a new service requirement to the regulations due to the current turmoil in the tax credit market. He predicted that some resyndications will not be able to occur if the requirement is adopted. In addition, there will be an unfair advantage to yield buyers, which are entities seeking to refinance properties and run them without any service obligations.

Mr. Bobrowsky stated that an entity seeking to resyndicate will improve energy efficiency and add in TCAC's ADA requirements. He commented that residents and the state receive a great benefit in exchange for the resyndication. He concluded that adoption of the new requirement will make it more difficult for the benefit to occur.

Ms. Ortega asked if yield buyers receive any tax benefit from property purchase.

Mr. Stivers confirmed that yield buyers receive no tax benefit from the transaction.

Ms. Ortega asked if adopting staff's proposal could lead to a decrease in projects that have service obligations due to a concern about longer service commitments.

Mr. Stivers stated that the policy change was unlikely to impact 9% applicants because they must provide services in order to receive a maximum point scores. He stated that the policy could impact the 4% [competitive] applicants who are able to choose from a menu of point options. He suggested that 4% applicants may choose the services option less frequently than some of the other menu options.

Mr. Stivers stated that CDLAC's minimum point score had been reduced in the last year to make projects more feasible. He stated that he did not know how likely CDLAC applicants were to choose services as a requirement because the current point threshold is fairly easy to obtain.

Mr. LoFaso asked Mr. Stivers to confirm that applicants who had no prior obligation to provide services were not discouraged from offering them voluntarily because the applicants were not subject to a service requirement after the fact.

Mr. Stivers confirmed that applicants who provided services voluntarily during their first syndication period will not be subject to the proposed service requirement.

Mr. LoFaso asked Mr. Stivers to explain the revisions that were made to the standards by which the proposed change would be applied.

Mr. Stivers stated that staff revised the waiver standards. He explained that the original proposal allowed for a potential waiver of the service requirement if a project demonstrated negative cash flows over the last 3 years. He noted that a project may experience negative cash flows as the result of a new service requirement even though the project had no prior cash flow issues; therefore staff proposed a change, which states that TCAC may waive service requirements for projects with less than \$20,000 of cash flow over last 3 years.

Mr. Gordon summarized that Mr. Bobrowsky requested an amendment to remove the requirements associated with Item 84 of the regulation package. He announced that he supported staff recommendations regarding this item. He asked the other voting Committee members if they wished to make a motion to support Mr. Bobrowsky's request.

Ms. Ortega stated that she was not inclined to differ from staff recommendations. She commented that she understood the cost pressures; however the 9% tax credit was a scarce good.

Mr. Bobrowsky stated that most resyndication projects were 4% tax-exempt bond projects.

Mr. LoFaso stated that he would not make a motion for a variety of reasons.

Mr. Sertich stated that he supported the staff recommendations and his agency will continue working with TCAC to refine them in accordance with the comments it receives.

Mr. Gordon asked if the voting members wished to make a motion regarding the full regulation package as amended.

Mr. Stivers asked that motion include the 3 changes he proposed in his December 14, 2016 memo.

MOTION: Ms. Ortega moved approval of the regulation package as amended and with the 3 changes described in Mr. Stivers' memo. Mr. LoFaso seconded and the motion passed unanimously by a roll call vote.

7. Public comment

William Leach congratulated the Committee and staff on 2 ½ years of positive changes to the program, and noted staff has been improving the application and place-in-service processes. He also commended staff on their willingness to listen to stakeholders during the application proposal process. Mr. Leach asked that TCAC rewrite Section 10325, which describes the 9% tax credit award process. He suggested combining the awards section with the tie-breaker. Mr. Leach stated that the existing system with maximum points and a relatively simple tie-breaker restrains the Committee and staff in terms of making policy decisions. He commented that the current system does not give the development community incentives to

meet TCAC's public policy goals. He explained that TCAC's current methods for achieving public policy goals include creating new point categories, adding mandatory thresholds or adding features to the tie-breaker. Mr. Leach suggested TCAC rewrite the sections regarding points, tie-breakers and the overall system in order to incentivize the TCAC policy goals.

Mr. Gordon stated that Mr. Leach proposed to remove the current program and restart it completely. He commented that this approach may be right, but it would probably never happen. He admitted that the application process was incredibly complex with applicants finding all sorts of new ways to gain points under the tie-breaker system. Mr. Gordon stated that program users and staff understand the process very well although is very complex.

Mr. LoFaso thanked the staff for the work on the regulations and for creating the comment matrix as requested by the State Controller. He stated that the matrix made it easier to digest the complex information.

8. Adjournment

This meeting adjourned at 2:40 p.m.