

PRIVATE ACTIVITY BOND AUTHORITY BOARD MEETING

Governor's Office of Economic Development
Salt Lake City, Utah

MINUTES

Monday, December 8, 2014

Members Present

John T. Crandall (Chairman)
Richard K. Ellis
Grant S. Whitaker
David A. Feitz
Kyle Kershaw
Michael Jensen
Jamie Davidson
Wayne Cushing
Dennis Yarrington

Representing

Governor's Office of Economic Development
State Treasurer
Utah Housing Corporation
Utah State Board of Regents
City of South Salt Lake
Tooele County
Orem City
Salt Lake County
Davis County

Excused Members

Theresa A. Foxley
Wayne Parker

Governor's Office of Economic Development
Provo City

Staff and Visitors

Roxanne Graham
John Brereton
Susan Eisenman
Jeff Van Hulten
Julia Barnhouse
Dave Miner
Fred Olsen
Blake Wade
Cleon Butterfield
Mark Cornelius
David Schwanke
Richard Davis
Scott Bond
Ricky Hatch

Governor's Office of Economic Development
Affordable Housing Advisors
Attorney General's Office
Governor's Office of Economic Development
Governor's Office of Economic Development
Municipal Bond Consulting
Ballard Spahr
Ballard Spahr
Utah Housing Corporation
Cowboy Partners
Utah Higher Education Assistance Authority
Utah Higher Education Assistance Authority
Sandy City
Weber County

WELCOME AND INTRODUCTIONS

The Private Activity Bond Authority (PAB) Board Meeting was held in Salt Lake City, Utah, at the Governor's Office of Economic Development and called to order at 9:00 a.m., by John T. Crandall, Chairman.

Mr. Crandall excused Wayne Parker due to illness and Theresa Foxley due to a schedule conflict.

Mr. Crandall introduced two potential new Board Members: Scott Bond, Assistant Chief Administrative Officer for Sandy City representing the Utah League of Cities and Towns; and Ricky Hatch, County Clerk/Auditor for Weber County representing the Utah Association of Counties. Their names have gone through the nomination process and are awaiting confirmation at the next Senate Confirmation Hearing, which is scheduled in February.

Mr. Crandall announced that Dennis Yarrington would be retiring from the PAB Board, and also retiring from his current position as the Davis County Auditor on December 31. He thanked Dennis for the service he has given as a Board Member.

APPROVAL OF MINUTES

Chairman Crandall requested a motion to approve the minutes from the October 8, 2014, PAB Board Meeting.

Kyle Kershaw moved and Dennis Yarrington seconded a motion to approve the minutes of the October 8, 2014, PAB Board Meeting. The motion carried unanimously.

STATUS OF ACCOUNTS

Roxanne Graham reviewed the 2014 Volume Cap Accounting Summary as shown below:

**PAB ACCOUNTING SUMMARY
December 8, 2014**

	Pool*	2013 MF CF**
Starting Account Balance	\$ 172,158,500	\$ 31,915,000
Remaining Balance	\$ 172,158,500	\$ 31,915,000
Unallocated Cap Request		
UHC - 100%	\$ 172,158,500	

*Includes Student Loan Account original allocation.

**Balance from original \$50,000,000 set-aside by Utah Housing Corporation from 2013 Single Family CarryForward Cap for multi-family projects. This amount has already been carryforward; no further action is required.

VOLUME CAP AWARD FOR 2014

Roxanne Graham reviewed the amount of volume cap awarded to the State of Utah for 2015 as shown below. There is a slight increase in the total amount from 2014; \$296,825,000 to \$301,515,000, a difference of \$4,690,000.

Allotment Account	Percentage	Dollar Amount
Single Family	42%	\$126,636,300
Student Loan	33%	\$ 99,499,950
Small Issue Account	24%	\$ 72,363,600
Multi-Family	12%	\$ 36,181,800
Manufacturing	12%	\$ 36,181,800
Exempt Facilities	1%	\$ 3,015,150
Totals	100%	\$ 301,515,000

VOLUME CAP ALLOCATION EXTENSION REQUESTS

Liberty Center Apartments

Cowboy Partners requested a seventh extension on the \$14,000,000 volume cap allocation for the Liberty Center Apartments located in Provo, Utah. The applicant also requested a waiver of the extension fee because: 1) they have already paid over \$36,000 in fees; and 2) the last extension was only valid for 60 days instead of the customary 90 days. The applicant asked the extension fee be waived as long as the bonds closed on or before January 15, 2015.

Mark Cornelius, representing Cowboy Partners, gave the following update to the Board:

- Ally Bank has approved the funding for the permanent loan.
- Goldman Sachs has approved the sale of the Low Income Housing Tax Credits and funding for the construction loan.
- Kier Construction won the bid as the general contractor for the project.
- A request has been submitted to Provo City asking for their assistance to waive some of the fees associated with the project to help reduce the costs of the project. This is the last item they are waiting for before they can close on the project.

This has been a difficult and expensive project to build. Cowboy is now in a position of having to put a great deal of their own money into the project. This is above and beyond the deferred developer fee and other funds already contributed to the project by the developer. Due to these many factors, Cowboy requested: 1) a waiver of the extension fee for the next 30 days until the project closes in January; or 2) a pro-rated fee if the bonds close within a few days after January 10.

A discussion of the current fee schedule, criteria for waivers of fees and the number of extensions granted to a project took place by the Board.

Kyle Kershaw suggested that the fee schedule policy discussion held at the January Board Meeting also include criteria for waivers and that any decisions made, be made retroactive to the December Board Meeting to reflect the requests made by Cowboy Partners and a possible refund of the extension fee.

Kyle Kershaw moved and Jamie Davidson seconded to approve the seventh extension until the April 2015 Board Meeting on the \$14,000,000 total volume cap allocation to Cowboy Partners for the Liberty Center Apartments. The motion carried unanimously.

Kyle Kershaw moved to deny the fee waiver request from Cowboy Partners with the understanding that any fee waiver policy put into place in January 2015 be made retroactive to December 1, 2014, and any fees paid by Cowboy Partners would be considered for refunding under that policy.

Susan Eisenman, the Board's AG representative, reminded the Board that any changes to the current PAB Fee Schedule has to be submitted to the Legislature for approval. The waiver of fees is not currently included in the fee schedule policy, so adding this to the policy would also have to go before the Legislature for approval. The decision to waive fees for certain outside entities should probably be done by Administrative Rule, which needs to go through the Administrative Rule process.

Susan outlined the following procedures for changes to any current policy:

- The fee schedule is pursuant to the Budgetary Procedures Act, not the Administrative Rule Act.
- It requires each State Agency that proposes a new fee or proposes to change a fee to adopt a fee schedule.
- The fee schedule must be presented in a public meeting pursuant to the Open and Public Meetings Act.
- The State Agency must consider any results from the Public Hearing.
- The fee schedule is then submitted to the Legislature as part of the Agency's annual appropriations request.

The deadline for making any changes to the fee schedule was September 1, according to GOED's Financial Director. Also, since the Fee Schedule Policy was not listed as an agenda item for today's Board Meeting, it precludes the Board from discussing any proposed changes to the fee schedule.

Kyle Kershaw withdrew his motion to deny the fee waiver request from Cowboy Partners in light of the information presented.

Chairman Crandall then questioned whether the Board has the right to waive fees. Susan Eisenman stated since it is not part of the current fee schedule policy or Administration rule it does not allow the Board to take this action, although there has been some precedent for doing so.

Chairman Crandall asked Susan, as the Board's counsel, whether the Board has the ability to waive a fee. The statute states that the fees have to be reasonable and cover the costs of the Program. If the Board was to waive a fee as it was no longer reasonable and/or needed to cover the costs of the Program it would be violating the spirit of the law. It does state that additional extensions are subject to substantial progress and approval by the Board; however, it also states that there is a limit of four extensions on an allocation. The Board needs to decide whether substantial progress has been made by Cowboy Partners on the project to go over the four extension limit

and then determine what a reasonable fee is. To waive a fee would be going outside the boundaries of the rules, policy and fee schedule, but the statute requires the Board to charge a reasonable fee.

Grant Whitaker added that this project was on the agenda for Utah Housing Corporation's Board Meeting that Thursday for approval of the Low-Income Housing Tax Credits.

VOLUME CAP ALLOCATION REQUESTS

REMAINING UNALLOCATED BALANCE

Single Family Account – Utah Housing Corporation

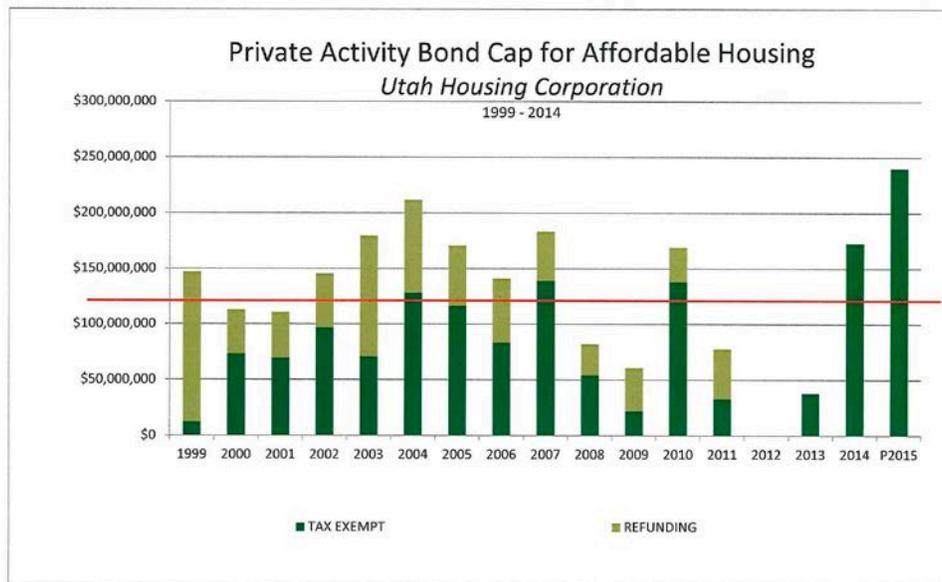
Utah Housing Corporation, representing the Single Family Account applied to receive any remaining unallocated 2014 volume cap. The balance remaining is \$172,158,500.

Grant explained to the Board how CarryForward (CF) volume cap is used covering the following points:

- It is allocated to authorized issuers, like UHC and the Utah State Board of Regents.
- CF cap is good for three years.
- Designated portion of the CF cap from 2012 and 2013 were made available for future multi-family projects.
- CF cap from 2009 and 2010 totaling \$258M was converted into the Mortgage Credit Certificate Program, which extended that CF cap for an additional two years. The Program enables the homebuyer to get a tax credit, but they cannot use tax-exempt bonds for their funding. They have to get a regular street mortgage loan and at the end of each year when they file their taxes, they do a calculation and get a credit back. It is not a refundable credit, but it is a deduction they can get on their taxes. The reasons why this Program is not working, in most cases, are: 1) the borrower has to owe taxes; and 2) most of the borrowers have such low incomes and taxes, that they do not itemize their taxes. They just take their standard deduction. The Program had to be built, lenders trained, etc., which took time. The Program did not roll out until May 2014; however, it is not working. The total amount of MCC allocations has only been about \$20M. Any amount not used from this conversion expires at the end of this year.

On the other hand, UHC has been able to successfully issue tax-exempt bonds this year in the amount of \$172M. The Program they are using is complex and requires the issuer to have the ability to hedge their mortgage-backed securities. Transactions are done easier if the company services their own loans, which UHC does. UHC is the only FHA to successfully use this Program in the country. The CF requested will be good for three years. UHC, currently, has approximately \$500M in CF; but, they will be able to issue \$250-\$300M of tax-exempt bonds under this Program on an on-going basis, issuing \$20-\$30M per month.

Cleon Butterfield gave the following handout to the Board showing the volume cap activity of UHC from 1999-2014.



Chairman Crandall asked of the approximate \$175M issued in 2014, how much of it was from CarryForward volume cap. Cleon responded that it was all from CarryForward cap. The entire CarryForward cap from 2011 has been issued and they are working on 2012's.

Mr. Crandall asked how much CarryForward does UHC currently have, not counting today's request. The balance is approximately \$488M. Adding today's request of \$297M would bring to total to \$780M. By the end of 2015, issuing \$250M-\$300M would leave a balance of over \$500M. All 2012 CF cap that would expire at the end of 2015 will have been issued by June 2015. By the end of 2015, UHC will be working on issuing 2013 CF cap.

CarryForward cap was allocated to Multi-Family (MF) projects in the amounts of \$75M and \$50M from 2012 and 2013 from the Single Family (SF) Account. After Cowboy Partners closes on Liberty Center, there will be approximately \$45M left in 2012's CF and the full \$50M left for 2013 for a total of \$75M. Grant commented on why there is so much CF cap left for MF projects. Part of the problem is that developers are required to serve low-income people based on limits established by the U.S. Treasury and HUD. These entities look at the incomes for this group of individuals over the last five years and see that their incomes have been hit really hard. Due to the low incomes, rents can only be charged at a percentage of the maximum incomes allowed. Developers cannot get the rents up high enough to cover all the costs of developing a project, which is why more projects are not being done. UHC has been looking at the tax credit program to see what is likely to happen for the next five years as incomes are likely to go up. For this same reason, the Single Family Program is not working as well either.

In order for the Board to have a clearer picture of the CF totals, Chairman Crandall requested that the CF amounts be shown for the SF in the 2015 status of accounts sheets.

Grant informed the Board that they continue to help first-time homebuyer and those people who are not first-time homebuyers by using other mechanisms to fund those mortgage loans. The tax-exempt funding has provided an interest rate that is below the market rate, which is something other funding programs have not done. The other programs are all at market-rate because UHC is selling mortgage-backed securities into the market. The investors are not going to take less interest earnings from them, just because they are serving low-income, first-time homebuyers. When interest rates rise, there will be a spread between tax-exemption and the others. It is a critical part of our economy to assist low-income people in the ability to buy their first home.

Kyle Kershaw asked what the characteristics of the typical first-time homebuyer are, e.g., approximate income, the interest rate on their mortgage, the total amount of their mortgage. Grant replied that UHC is serving the population whose incomes are at 75% of the Average Median Income (AMI), which according to HUD standards is in the very low-income category. The average home price home is \$160,000 with an interest rate of 3.89%, compared to other mortgages at 4.25%.

David Feitz moved and Richard Ellis seconded a motion to approve the remaining volume cap balance of \$172,158,500 to the Single Family Account to be used for Single Family Housing. The motion carried unanimously.

VOLUME CAP CARRYFORWARD REQUESTS

Utah Housing Corporation

Utah Housing Corporation, issuer for the Single Family Account, requested to carryforward \$124,666,500 from their original 2014 volume cap allocation and \$172,158,500 from the 2014 unallocated volume cap balance (total \$296,825,000).

Michael Jensen moved and Kyle Kershaw seconded a motion to carryforward \$296,825,000 from the 2014 Single Family Account. The motion carried unanimously.

Kyle Kershaw expressed appreciation to UHC for their ability to CarryForward and use the unallocated cap so it would not be lost at the end of the calendar year.

Chairman Crandall informed the Board that a retreat is scheduled for April 2015 and one topic of discussion will be on other viable uses for PAB volume cap, especially in the Exempt Facility category. Information may not be as accessible at the local issuer level, which will be one area of the discussion as well. Mr. Crandall asked Board Members to be thinking about other ways volume cap could be used for this discussion.

PAB Administrative Rule Update

Jeff Van Hulten updated the Board on the progress of the Administrative Rule for the PAB Program that was first discussed at the October Board Meeting. The rule was published in the October 1, Administrative Rule Bulletin and some public comments were received from one Board Member, which have been incorporated into the new rule in the Board Meeting materials. The agency has 120 days from October 1, to make the

rules effective or bring in a new set of rules with provisions based on the comments received. The 120-day deadline is January 29.

Chairman Crandall asked from a procedural standpoint, do the changes made to the rule that was published need to be reviewed by the Administrative Rule Committee and what is the procedure from here.

Jeff gave the following timeline for Administrative Rules:

- Once a rule is published, the agency receives comments within a 30-day public comment period.
- After the public comment period is over, it is up to the discretion of the Agency, as well as, the PAB Board, whether or not to incorporate the comments.
- If the Board decides to incorporate the comments, the rule is then passed up to the senior management of the agency for their approval.
- The rule is then posted in the next Administrative Rule Bulletin and is open to another 30-day public comment period.
- The procedure repeats itself with the Agency having the authority to say when no more public comments will be taken.

Jeff raised one concern relating to R357-9-4, Subsection 1, which states “the availability of volume cap allocations given to a project shall depend upon the date an applicant submits a completed application.” The question raised was in relationship to the actual date applications are received. There are already established application deadlines. If two or three applications are received before the deadline, but on different dates, is the Board going to consider them equally or consider each application by the actual date submitted in relation to the amount of volume cap allocated to each applicant. Another related issue the Board needs to make a decision on, is if an applicant misses the submission deadline, how hard-lined does the Board want to be about: 1) accepting late applications; 2) awarding allocation to applications submitted before and after the deadline and then how is the allocation to be awarded, first-come, first-serve, percentage split, etc.

Grant Whitaker gave his opinion that as long as the application was submitted by the deadline, the actual date when it was submitted should not matter in considering allocation awards between applications. All eligible applications should be considered equally. If an application is submitted after the deadline, the application should not be reviewed nor brought before the Board for funding consideration. The rules are set up to be a fair process for everyone.

Staff brought up an issue that if cap was available and no applications had been submitted for funding at a regular Board Meeting, they have allowed an application to be submitted after the deadline.

Chairman Crandall stated that if an application did not make the deadline for the regular Board Meeting, the Board does have the ability to call a special Board Meeting to consider that application. Grant commented that conditions need to be spelled out either specifically in the rules or in general that the Board will either accept an application late for a regularly scheduled Board Meeting if no applications have been

received or the Board has the ability to call a special Board Meeting in between regularly scheduled Board Meetings to review and approve an application for funding.

Kyle Kershaw commented that the next step to be considered on this item is how allocations are to be made if there is not enough volume cap to fund all approved applications. Is it to be done on a percentage basis, equal or pro rata share, etc.? Another funding consideration may be, how ready an application really is, e.g., when will the bonds close.

Richard Ellis asked if there was an instance where one project was more worthy than another project to receive volume cap, does the Board want to be tied to the “equal shares, pro rata” language that might be established.

Dave Feitz commented that the deadline dates need to mean something and authority needs to be spelled out if an application can be accepted after a deadline has passed. He also stated that the merits of a project, e.g., size, amount of cap, AMI served, etc., should be considered by the Board when there are competing applications for volume cap in the same funding cycle.

John Brereton told the Board about a survey submitted several years ago to Board Members asking them to list what their preferences were in terms of a project’s characteristics e.g., project’s rents lower than the usual 60% AMI, etc. This priority list is used when reviewing applications.

Grant Whitaker responded that the priority characteristics are listed in the Administrative Rule, but it is not spelled out which characteristics are better to have and no numerical value is assigned to each characteristic. Without a value, it does not show how an application will be scored, so an applicant does not know what will give them more points in order to receive funding. He suggested at some future date to have the Board prioritize the criteria and characteristics of an application and work on assigning a point system for these priorities. This would serve as a protection for the Board.

Chairman Crandall invited Susan Eisenman to comment on the current version of the Administrative Rule. Her comments included:

- An Administrative Rule has the force of law and is written when it applies to the public.
- A policy is more of the internal workings and procedures of a Program.
- She shared the same concerns as stated by Board Members about the priorities of funding – first in line or list of criteria.
- She reminded Board Members that the statute requires the Board to consider a list of things, which consists of:
 - Establishing criteria for making allocations.
 - Principal amount of bonds to be issued.
 - Nature and location of the project.
 - Likelihood that the bonds will be sold and the timeframe of bond issuance.
 - Whether the project or program could obtain adequate financing without an allocation of cap.
 - The degree of which an allocation of cap is required for the project to proceed.

- The social, health, economic and educational effects of the project.
- The anticipated economic development created or retained.
- The anticipated number of jobs created or retained.
- The degree to which a residential rental project targets lower income populations and is accessible housing.
- The project meeting the principles of quality growth recommended by the Quality Growth Commission.
- The Administrative Rule is an attempt to flush out the generalities listed in the statute and make them more specific.
- When considering scoring the application, the Board may want to do that in a policy so they have the flexibility to change it, if needs be, in the future. As long as you have a transparent process to change the scoring, it can be done outside the rule process. It is not required to be done in an Administrative Rule.
- Another item that the statute requires the Board to have is a hearing procedure. If a person wants to make a claim on how their project was funded, the hearing procedure would outline how it would be done. The statute requires the Board to use the Administrative Procedures Act to do this, so a rule needs to be included in the current rule outlining the procedure.
- The wording for R357-9-4, Subsection 2, has been changed, from discretionary to mandatory, using the word “shall” in considering the 13 criteria listed for reviewing applications. An Administrative Rule has the force of law behind it, so if this change is kept, a public record will have to be made for all applications showing that each one of these items was considered in the review process.

Chairman Crandall invited the Board to review the comments made on the Administrative Rule and to send any additional comments on the rule to Roxanne by the end of the month. The rule and any additional comments will be addressed in the January 14, 2015, Board Meeting.

Volume Cap Discussion

Roxanne Graham presented the research results on PAB volume cap distribution comparison of different States. Comparisons were done between: 1) States surrounding Utah; 2) States receiving the largest amounts of volume cap; and 3) States comparable to the same amount of volume cap that Utah receives. The intent of the project was to compare the percentages assigned to the different accounts used in other States to the percentages and accounts used by our State. After looking at the results, however, there was not one State that could be compared to ours. Every State uses different accounts and different formulas to allocate the cap from a first-come, first-serve basis to a lottery system. The different governing bodies that oversee the PAB Program range from the Governor or Commerce Director having sole discretion of the cap allocation, to State housing, finance or economic development agencies. In some cases, special committees are formed with anywhere from three to eight people on the committee. Although the project did not give the end result that was hoped for, it was very interesting to look at how other States allocate their PAB volume cap.

New UHEAA Student Loan Program Presentation

David Feitz presented to the Board the background and history of the Utah Higher Education Assistance Authority (UHEAA) and its Student Loan Program. Changes in the Student Loan Program due to Federal legislation of the Health Care and Education Reconciliation Act of 2010 affected UHEAA operations and their ability to use PAB volume cap to service student loans.

UHEAA recognized the critical need for supplemental loan funds for students in high cost, high demand program. The cost of obtaining degrees in these programs is in excess of the Federal student loan limits. They have created a new supplemental loan program for these students, with a fixed interest rate, no origination fee and 10-15 years to repay. The program will be eligible for Utah residents attending any eligible institution and non-Utah residents attending eligible Utah institutions. Initial loans will be made with UHEAA seed money. Bonds will then be used to refinance this seed money.

The projected soft launch of the program is in 2015. No volume cap will be used in 2015, but UHEAA anticipates using its allocation in future years as program volume increases.

Other Business and Adjournment

The next Board Meeting of the Private Activity Bond Authority Program is scheduled to be held on Wednesday, January 14, 2015, at 9:00 a.m., at the Governor's Office of Economic Development.

Mr. Crandall thanked the Board for their time and participation in the meeting.

The meeting adjourned at 11:01 a.m.

Submitted by:
Roxanne C. Graham