April 2009

TaxCredit*Advisor*

News, Ideas and Information for Tax Credit Developers and Investors

Issue Theme: Green Building

Industry Awaits Guidance on New LIHTC Funding Initiatives

THE FEDERAL GOVERNMENT has taken some initial steps to implement the new low-income housing tax credit (LIHTC) funding resources established by the economic stimulus act. But the industry is awaiting critical guidance so state housing credit agencies can begin awarding the funds to stalled LIHTC projects.

At present, there's more questions than answers regarding how state housing credit agencies (HCAs) can and will implement the new credit exchange and gap financing programs. State agencies, though, are doing all they can to prepare for implementation.

ARRA,

continued on page 17

NIMBYism: Using the Fair Housing Act to Overcome Municipal Opposition

By Michael Allen, Esq., Relman & Dane, PLLC

DEVELOPERS USING THE low- income housing tax credit (LIHTC) are no strangers to the NIMBY ("Not In My Back Yard") syndrome. In some communities, the mere hint of an affordable housing proposal generates a kind of massive resistance reminiscent of the worst, old Jim Crow days. And that is no historical accident, because it is often the apprehension that new tenants will be people of color (or families with children) that gives rise to NIMBYism. In response, municipal officials often require developers to consult with opponents before seeking zoning and land use approval. The ensuing delay is often fatal to affordable housing development.

Fair Housing,

continued on page 30

Affordable Housing, Retail Space… and a Fire Station

BUILDING AFFORDABLE housing, or any housing for that matter, on top of a fire station might seem highly unusual. But city officials in Alexandria, VA, a close-in suburb of Washington, DC, believe that the new Station at Potomac Yard Apartments will be fully leased when the project opens this fall.

"Affordable housing is one of the city's great, largely unmet needs," says Helen McIlvaine, Deputy Director of the city of Alexandria's Office of Housing. "We've had tremendous interest from people, from employees who work for the city, who would be

Potomac,

continued on page 28

Inside This Issue

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Publisher: Peter Bell

Editor: Glenn Petherick
202-939-1774
gpetherick@dworbell.com

Advertising: Scott Oser
301-279-0468
soser@dworbell.com

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Address correspondence to:
Circulation
1400 16th Street, NW, Suite 420
Washington, DC 20036
Tel 202-939-1790, Fax 202-265-4435
www.housingonline.com

Editorial office at same address as above.

HUD Releases FY 2009 Income Limits for LIHTC, Bond Projects

THE U.S. DEPARTMENT of Housing and Urban Development (HUD) has issued new income limits for federal Fiscal Year 2009, to be used starting 3/19/09 to determine tenant income and rent limits for housing units assisted by low-income housing tax credits (LIHTCs) or financed by tax-exempt multifamily housing bonds.

For the first time, HUD has published separate annual income limits for metropolitan areas and non-metropolitan counties nationwide applicable only for LIHTC and bond-financed projects. These new limits reflect adjustments necessitated by LIHTC program amendments made by the Housing and Economic Recovery Act of 2008 (HERA). These changes include integrating HUD's "hold harmless" exception into the standard methodology for calculating estimates of area median income (AMI); providing special adjustments of income limits for HUD "hold harmless-impacted" projects; and basing income limits for non-bond projects in rural areas on the greater of the HUD AMI or the national median income for non-metro areas. Hold harmless-impacted projects are developments for which their initial tenant income and rent limits were established in calendar 2007 or 2008. Their original income and rent limits were kept from falling from the limits for the previous year because of formula adjustments. However, as a result of this treatment, many of these projects would likely not have seen any future increases in income or rent limits for a year or more – until the HERA amendment. *(For background on amendments, see* Tax Credit Advisor, *September 2008, p. 33.)*

The new HUD income limits provide dollar ceilings for each area for one- to eight-person households at 50% of AMI and at 60% of AMI. A second set of income limits, for households at 50% and 60% of AMI, is provided for harmless-impacted projects for affected areas. The new limits also include separate maximum tax credit rents for each household size.

The minimum income limit for rural areas for a four-person household is $26,650 at 50% of AMI and $31,860 at 60% of AMI.

HUD simultaneously issued a separate set of income limits for use in federal programs other than the LIHTC and multifamily bond programs, such as Section 8.

(Income limits, documentation: http://www.huduser.org/datasets/il.html) ■

Calendar of Events

NH&RA/National Council of Affordable Housing Market Analysts
2009 Spring Public Policy and Market Study Forum
April 6-7, 2009 • Washington, DC

National Housing & Rehabilitation Association
2009 Spring Developers Forum
May 11-12, 2009 • Hyatt Regency Century Plaza • Los Angeles, CA

Details at http://www.housingonline.com

Low-Income Housing Tax Credit

Simplifying LIHTC Program Overlays; Some Sound Advice and Strategies

By Ruth L. Theobald Probst, CPM®, HCCP™, SHCM™

Step-by-step instructions for integrating multiple housing programs

WHAT IS THE MOST common concern expressed by managers of Section 42 low-income housing tax credit properties?

By an overwhelmingly majority it is layering multiple housing programs on top of each other and assuring compliance with all of their various aspects, and the specific regulatory agreements that govern their implementation on a specific housing project. Following is a step-by-step approach to coordinating these variables with a high degree of confidence.

Step 1: Identify all of the programs that will be involved with a particular housing project. Unfortunately, this can be the most challenging aspect for management agents to overcome. Nevertheless it is the most critical. Ask the developer for copies of funding applications that have been approved, and/or regulatory agreements. If they cannot provide these, ask for alternative resources such as limited partner contacts or for permission to request documents from the state housing finance agency.

Step 2: Map out which units will be affected by which programs. *Not all units are usually affected by all programs. Conversely several programs may affect an individual unit.* Knowing this is vital to success.

Step 3: Lay one program's regulations over another. *Just one*. Make certain you understand the interplay between them before placing any additional programs on top of the first two. The first two should be the ones affecting the most units. Add additional program requirements one at a time after that has been accomplished.

Example: A 100-unit project is 100% tax credit with tax-exempt bonds financed under a 40%@60% set-aside, and has 8 HOME units. This means that 100 units must comply with Section 42 requirements. Of these 100 units, 40 must comply with bond regulations (which are now very similar to LIHTC rules, thanks to the Housing and Economic Recovery Act of 2008). Eight units must comply with HOME regulations. Study the tax credit and bond restrictions first. Then add the HOME regulations, remembering that they will affect only 8 units which you will have identified in Step 2.

Step 4: Study the most restrictive principles between the programs and

Overlay,

continued on page 4

Overlay,
continued from page 3

decide how they will be handled. Some rules combine quite well and can blend easily if they are understood. Others are in direct conflict. It is these that will require the most focus.

For instance, both the tax credit and bond programs now have the same student rules, which are quite restrictive and much more so than the HOME program. Since the tax credit program affects all units in our example above, it is the underlying rule that must be followed. Therefore, any family moving into any unit must abide by these rules even though the HOME program in and of itself would be less restrictive.

Conversely, when a HUD Section 8 project encounters a blanket of LIHTC funds for rehabilitation, any number of the in-place families may not income- or student-qualify for Section 42. Because Section 8 is the underlying program and because it disallows eviction except for its own definition of good cause, owners cannot evict families just because they fail to qualify for Section 42. The more aware ownership and management is of these oppositional realities, the more effectively they can guide the project to success.

Step 5: Take it one unit at a time. Most of us sag under the mere idea of complexity which, when fully understood, loses its terrifying power.

For instance, the "over-income" rules for the tax credit program are different than the HOME program. For Section 42, the rules are applied inside a building (BIN) when a household is recertified with income above 140% of the current eligibility income limit. For HOME, over-income is triggered when a family's income exceeds the applicable limit by as little as one cent.

In our example there are eight HOME units, any of which would conceptually go into a HOME "over-income" status before the tax credit "over-income" event would be influenced. By understanding the thresholds at which each unit triggers that status and by taking it into account just one unit at a time, the task becomes much easier because it is focused within the confines of specific units.

Step 6: Watch income and rent limits for all program types. Different programs have their own established limits which must be complied with at the time a family moves into a unit.

Example: Section 8 rents are based on contract rents of which a family pays 30% of their adjusted income; the tax credit program sets maximum rents at a formula of 1.5 persons and 30% of the Section 42 income limits, which is then divided over a 12-month period. HOME rents are based on a comparison of Fair Market Rent against either the established Low- or High- HOME rent. All of these are different and it can be challenging to select the right rent. If you know what programs affect specific units, it is much easier to select the correct rent by selecting the rent that is the lowest of the available rent limits for that specific unit.

Step 7: Know who to ask and where to get questions answered.

Overlay,
continued on page 5

Overlay,
continued from page 4

Your state housing finance agency is often the best source for solutions to mystifying program interaction. Often these agencies are the source of funding for the most common program blends. If you are unable to resolve challenges on your own, get expert advice from a source that understands the impact of multiple programs.

In conclusion, focus step-by-step and one at a time. Know which program rules apply to that specific unit and follow the rule that covers all programs the most thoroughly for just that one. Over the course of time you will learn that what was once complex, is now understood and you will be asking for something more challenging. Perhaps.

Ruth Theobald Probst is the president of The TheoPRO Group, a national tax credit consulting business with an emphasis on asset management and compliance. For additional information visit www.theopro.com. ■

Housing Funding Increases in FY 2009 Omnibus Bill, FY 2010 Budget Outline

FEDERAL FUNDING for housing is increased in the omnibus appropriations bill (H.R. 1105) for Fiscal Year 2009 signed into law (P.L. 111-8) on 3/10/09, and in an outline of President Obama's proposed budget for the fiscal year (FY 2010) that will begin 10/1/09.

H.R. 1105 provides funding for the balance of FY 2009 for federal agencies and departments for which regular FY 2009 appropriations bills weren't previously enacted, including for the U.S. Departments of Housing and Urban Development (HUD) and Agriculture.

The omnibus bill provides $41.5 billion for HUD for FY 2009, a 10% increase over FY 2008. Increases above FY 2008 funding levels are provided for numerous HUD programs, including the Community Development Block Grant (CDBG) and HOME Investment Partnerships (HOME) programs, project- and tenant-based rental assistance, supportive housing programs for the elderly (Section 202) and disabled (Section 811), and public housing capital and operating funds.

H.R. 1105 contains $120 million for HOPE VI public housing revitalization grants, a 20% increase, and directs HUD to issue the FY 2009 notice of funding availability for the program within 60 days of enactment.

H.R. 1105 provides roughly level funding in FY 2009 for rural housing programs administered by the USDA's Rural Housing Service. The act, however, says new Section 538 guaranteed rural rental loans will not be eligible for interest subsidies, though they will not be subject to a guarantee fee. The act orders a study of the efficacy of the RHS Multi-family Housing Revitalization Program. This study is supposed to recommend improvements and about whether the program should be made permanent. The act also orders a Government Accountability Office study of the rural farm labor housing program.

The FY 2009 appropriations are in addition to the extra funds provided by the economic stimulus act for federal housing programs, including those of HUD and RHS.

(H.R. 1105, text & explanatory statement, http://www.rules.house.gov/111/LegText/111_omni2009_2.htm)

FY 2010 Budget Proposal

On 2/26/09, President Obama issued an outline describing his forthcoming proposed federal budget for FY 2010. The blueprint provides the total proposed appropriation level for individual departments and for certain programs. Detailed budget documents will be released in April.

The White House is proposing $47.5 billion in total spending for HUD for FY 2010, compared to $41.5 billion for FY 2009. The outline says the budget proposal will include $4.5 billion for the CDBG program, and increases – without specifying dollar amounts – for Section 8 project-based and tenant-based rental assistance.

Budget,
continued on page 6

Budget,
continued from page 5

The proposed HUD budget will also include $1 billion to fund the new National Affordable Housing Trust Fund, which was established by law in 2008 but hasn't yet been capitalized.

The HUD budget outline also proposes the establishment of a new Energy Innovation Fund, to spur energy efficiency in housing including through retrofitting of older housing and the leveraging of private-sector funds for these activities. It would also create a new Choice Neighborhoods Initiative, to support transformative activities that upgrade high-poverty neighborhoods.

The FY 2010 budget summaries don't contain any figures for proposed spending levels for rural housing programs.

(FY 2010 proposal: http://www.whitehouse.gov/omb) ■

Comparison of Enacted FY 2008, FY 2009 Appropriations
(in millions)

HUD PROGRAMS	FY 2008 ENACTED	FY 2009 OMNIBUS
Tenant Based Rental Assistance	$16,426	$16,817
Project-Based Rental Assistance	$6,382	$7,100
Public Housing Capital Fund	$2,439	$2,450
Public Housing Operating Fund	$4,200	$4,455
HOPE VI	$100	$120
HOME Investment Partnerships	$1,704	$1,825
Community Development Fund (includes CDBG)	$3,866	$3,900
Native American Housing Block Grants	$630	$645
Housing Opportunities for Persons with AIDS	$300	$310
Homeless Assistance Grants	$1,586	$1,677
Housing for the Elderly (Sect. 202)	$735	$765
Housing for Persons With Disabilities (Sect. 811)	$237	$250
Brownfields Redevelopment	$10	$10
Rural Housing & Economic Development	$17	$26
Lead Based Paint Hazard Reduction	$145	$140
HUD Total	**$37,600**	**$41,500**

USDA RURAL DEVELOPMENT PROGRAMS	FY 2008 ENACTED	FY 2009 OMNIBUS
Section 515 Rental Housing Direct Loans	$70	$69.5
Section 538 Rental Housing Guaranteed Loans	$130	$129.1
Section 521 Rental Assistance	$482.1	$902.5
Section 514 Farm Labor Housing Loans	$27.7	$20
Section 516 Farm Labor Housing Grants	$10	$9.1
Multifamily Preservation & Revitalization Demo.	$20	$27.7 *

** Includes $5 million for rural housing vouchers*

Donovan Talks Up Affordable Housing Preservation

HUD Secretary Shaun Donovan reiterated the Obama Administration's support for affordable housing preservation at a National Housing Conference forum in Washington in March.

Donovan said the preservation community "will have a new partner" at the federal level, and that the new American Recovery and Reinvestment Act (ARRA) gets HUD programs back on stable footing and sets the foundation for additional preservation activity. He noted the Obama Administration's forthcoming budget proposal for Fiscal Year 2010 will fully fund Section 8 contracts going forward.

Donovan said ARRA provides $250 million to renovate the nation's assisted housing stock, creating an infrastructure for future federal reinvestment in HUD-assisted rental properties. He reported he's also working with the U.S. Department of Energy to try to make every multifamily assisted housing and public housing unit eligible for federal low-income weatherization assistance funds.

Donovan indicated that HUD will focus new attention on the Department's Mark-Up-to-Market program, and recommit to measuring and understanding the impact of HUD's programs. HUD's FY 2010 budget request will provide funds for research and innovation and for evaluation of all HUD programs to encourage policy innovation. Donovan also indicated HUD plans to work closer with the Departments of Agriculture, Education, Energy, and Transportation to better integrate housing programs with education, transportation, and energy reform. ■

DEVELOPER PROFILE

From Urban High-Rise to Bungalow, Florida Developer Debra Koehler Tackles All Kinds of Projects

FLORIDA TAX CREDIT developer Debra Koehler, who specializes in rehabbing and preserving older urban high-rise apartment properties, is spending more of her time these days "selling" her deals, because of the greater difficulty today raising tax credit equity.

"I've never been as involved as I am now in who's actually buying the credits," she notes. In the past, when it was easy to find a syndicator to buy a project's low-income housing tax credits, Koehler says the end investor didn't really concern her. "But now," she explains, "I'm as active as possible. If [a syndicator] is showing [my project] to [a prospective investor] that I may actually have a relationship with, I'm making phone calls within that organization to let them know that that's our deal that they're looking at. I am actively marketing our credits along with the syndicator."

Koehler, a founder and partner of Tampa-based Sage Partners, LLC, became a developer by career change.

"I was a CPA by training and worked at KPMG," she notes, where her main clients were real estate developers, banks, and governments. In 1987, Koehler joined The Wilson Company, a Tampa-based real estate firm, in the accounting department. She eventually moved to the development side, working her way up to become a partner in 1992. In 1993, after the commercial real estate slide of 1990-92, "I spearheaded getting into affordable housing, and I was running the affordable housing side of our company."

During her stint at The Wilson Company, Koehler developed 34 housing credit projects with more than 9,400 units. She left The Wilson Company in 2003, and in 2004 started a real estate company (Atlantic American Realty Group) with an investment banking firm. From 2004 until 2007 she acquired and rehabilitated more than 800 multifamily units in the Tampa area, focusing on first-time home buyers. In October 2007, Koehler and Todd Turner, her other partner, established Sage Partners. The firm operates out of a 1924 bungalow that the two purchased and renovated.

"Our goal is to be small and nimble," says Koehler. "We're focusing on Florida, and particularly the Tampa Bay area."

Sage Partners specializes in a niche – "buying urban [apartment] high rises that are in need of substantial rehab with preservation," Koehler explains. She honed the skills for this from her past experience in developing affordable apartments, and from her early years at The Wilson Company when she developed, renovated, and repositioned two urban high-rise office buildings. "That, in combination with the residential side, has led me to where we are now," Koehler notes.

Koehler's current project is the rehabilitation of a 1971, 11-story, 188-unit apartment tower for senior and disabled tenants in downtown St. Petersburg, called The Columbian, using tax-exempt financing, 4% housing credits, state housing trust funds, a soft second

Debra Koehler

loan from the state, and an Interest Reduction Payments stream decoupled from the existing HUD Section 236 mortgage. HUD has already approved a 20-year renewal of the project-based Section 8 contract for 70% of the units. The $20 million acquisition/rehab project will entail renovations costing in excess of $34,000 per unit. Koehler came across the deal after the prior owner said he didn't intend to renew the property's Section 8 contract when it expired in September 2009, but the city wanted to find a way to preserve the property as affordable housing.

The complex and time-consuming process of piecing together the dollars for The Columbia is illustrative of what Koehler says is her biggest challenge today as an affordable housing developer – "trying to obtain all of the sources that you need to make these deals work."

Koehler is active as well in housing policy circles, her community, and trade groups. She's been appointed by two Florida governors to serve on the state's affordable housing study commission; has chaired the boards of the

Profile,

continued on page 8

Profile,
continued from page 7

Hillsborough County housing finance agency and the Coalition of Affordable Housing Providers, a statewide developers group; and has headed the board of a local non-profit that in part teaches women construction skills. Koehler's also been active for years in the National Housing & Rehabilitation Association, a trade group for affordable multifamily housing developers and related professionals. "It's the first organization that I joined when I started in affordable housing," she notes. "I've met more contacts in this industry through NH&RA than any other forum."

A mother of two teenagers, Koehler says she also likes to golf – when she gets the time – and has just taken up biking. ■

Comments Solicited on Magnet Fund

THE COMMUNITY DEVELOPMENT Financial Institutions (CDFI) Fund is soliciting public comments and responses to questions and issues raised regarding how it should design, implement, and administer the new Capital Magnet Fund (CMF) program authorized by the Housing and Economic Recovery Act of 2008 (HERA). Comments are due by 5/5/09.

CMF will offer competitive grants to eligible community development financial institutions (CDFIs) and nonprofits to help attract private capital for the development, preservation, rehabilitation, and purchase of affordable housing. The funds will also support economic development activities or community service facilities that, when paired with affordable housing activities, will implement a strategy to stabilize or revitalize a low-income area or underserved rural area.

Under HERA, eligible uses of funds include providing loan loss reserves, capitalizing revolving loan or affordable housing funds, capitalizing funds to support economic development activities or community service facilities, and funding risk-sharing loans.

In the *Federal Register* notice, the CDFI Fund seeks responses to specific questions about eligible activities, application criteria, geographic diversity, prohibited uses, and other areas.

(Notice: http://edocket.access.gpo.gov/2009/E9-4648.htm) ■

The Deal That Gets Done: More Often Than Not It's Green These Days

GREEN IS NOW the color in developers' eyes.

Whether it's affordable rental housing assisted by the low-income housing tax credit (LIHTC), historic rehabilitation, or a new markets tax credit project, developing in a green and sustainable fashion has become almost essential to compete effectively for tax credits and other resources.

There are different possible paths you can take to reap the myriad benefits – and multiple opportunities. These include expanded or modified resources under the economic stimulus act; incentives in states' LIHTC programs; governmental and utility incentives, funds, and rebates; and more.

Multiple Benefits

For affordable rental projects, there are multiple benefits, says Dana Bourland, Senior Director of Green Communities at Enterprise Community Partners, Inc. (ECP). ECP runs Enterprise Green Communities, a voluntary national green building rating and certification program tailored to construction and rehabilitation of affordable homes and multifamily rental properties.

These benefits include:

- Better odds of winning a competitive housing credit award, from the extra points under most state LIHTC qualified allocation plans (QAPs) for green and sustainable building features and construction practices. In some states, extra credits also can be gained. "Green and energy efficiency has become part of the allocation plan, and therefore new projects going forward have been very attuned to competing and incorporating green technology, green energy-efficiency approaches," says Boston attorney David Abromowitz, partner in the law firm Goulston & Storrs.
- Reduced project operating costs, from lower energy and water usage.
- Healthy indoor air quality and possibly lower utility bills for residents.
- Enhanced marketing appeal.
- Less adverse environmental impact.
- Governmental and utility tax incentives, funds, and rebates to offset or help pay for the cost of green improvements.
- A possible smaller LIHTC utility allowance, to boost net operating income.

Green,
continued on page 10

DC Project Shows the Payback from Green Retrofitting

GALEN TERRACE, an 84-unit affordable apartment property in the Anacostia neighborhood of Washington, DC, is a poster child for the benefits of green retrofitting.

In a $13.6 million transaction, the tenants' association joined with developers Somerset Development Company and the National Housing Trust-Enterprise Preservation Corporation to buy, renovate, and preserve the three-building federally assisted Section 8 property.

The renovation included energy efficiency and water conservation improvements with a payback period of 10 years or less. A comprehensive initial energy audit of the buildings identified needed improvements.

The incremental cost of the energy improvements was 3.8% of the development budget. Projected savings are 60% in energy and 21% in water usage.

Green elements included the installation of: solar reflective roof material; green label-certified carpets; Energy Star refrigerators; low-flow water fixtures (shower, toilet, faucets); new energy-efficient windows and doors; daylight sensors on outdoor lights; and barrels to collect rainfall for use to water landscaping. In addition there was insulation of water pipes and use of low-VOC paints, primers, sealants adhesives, and caulking. Renters receive a Green Home Guide and orientation. ■

Green,
continued from page 9

- Expedited design review and approvals. San Francisco, for instance, has priority permit processing for certain green affordable housing projects.

"From an owner/operator perspective, there's real financial benefits," says Bourland. Referring to retrofits of existing multifamily properties under Green Communities, she notes, "We're seeing, in some of our calculations, expected savings of 20 to 30 percent for energy, as well as water savings."

Different Rating Systems

General contractor Rick Cheverton, vice president of Knoxville, TN-based Empire Corporation, said there are more than 100 green and sustainable building rating systems nationwide.

Under the Green Communities system, housing projects are evaluated against a checklist of criteria in categories relating to design, water conservation, indoor air quality, energy efficiency, and other areas. Those that score high enough earn certification. Since the program's inception in 2004, 338 residential properties with 14,500 units – including 54 projects in 2008 alone – have been certified under Green Communities. The units break down to 78% new construction, 21% rehabilitation, and 1% a mix.

Other major national green building rating systems include the popular Leadership in Energy and Environmental Design (LEED) run by the U.S. Green Building Council; the National Association of Home Builder's National Green Building Standard; the U.S. Department of Energy's Energy Star for Homes program and a subset multifamily pilot; and EarthCraft.

Under LEED, different levels of certification, based on score, are possible, ranging from basic LEED-certified up to LEED Platinum. There also are multiple LEED rating programs, for different types of buildings and construction, plus one for neighborhoods. Multifamily housing generally has used LEED New Construction or LEED for Homes – the latter also has a pilot for multifamily buildings of 4-6 stories set to run through year-end.

'From an owner/operator perspective, there's real financial benefits. We're seeing, in some of our calculations, expected savings of 20 to 30 percent for energy, as well as water savings.'

Many state QAPs reference one of the national green building rating systems.

Common, High Payoff Features

Cheverton defines sustainable building as having three components: (1) energy efficiency; (2) water savings; and (3) air quality.

He said the most common features in LIHTC projects built by Empire have included things like on-site recycling centers for tenants, sidewalks designed to tie in with public sidewalks that link to public transit, bike racks, and Energy Star appliances.

Cheverton noted water-savings devices often are overlooked but can reap huge returns. "We found that we saved $30,000 a month on one of our properties just in water usage, by switching everything to the low-flow toilets and water-efficient faucets on both sinks and showerheads."

Another big boost can come from installing Energy Star lighting and light fixtures. One approach is to replace the existing incandescent bulbs in standard light figures with energy-efficient compact fluorescent lights (CFLs). But Cheverton suggested a wiser path is to replace the standard light fixtures with Energy Star-rated light fixtures. If not, he warned that tenants usually will replace the initial CFL, once it burns out, with a cheaper but less efficient incandescent bulb, defeating the purpose.

Abromowitz said common steps he's seen by owners of federally-assisted rental properties include some "very mundane but cost-effective" improvements such as caulking, upgraded insulation and windows, and the like. "Nothing fancy or sexy, but very cost-effective," he said.

Cheverton said green and sustainable equipment or improvements that pay for themselves in five years or less are a "no-brainer" and should be done. Energy Star lighting and water-saving devices, for instance, each have a payback period of 2-3 years, he noted. Cheverton advised careful evaluation of items with payback periods longer than five years, such as high-efficiency HVAC systems with a Seasonal Energy Efficiency Ratio (SEER) rating of 15 of 16. He

Green,
continued on page 12

Green,
continued from page 10

explained that the expected savings for items with payback periods of 5 to 10 years may be trimmed by excessive maintenance after year 5.

Cheverton said one way his firm helps developers choose from among the many possible green and sustainable menu options on a national rating system checklist is to develop an estimate of the per-point cost for each item. For example, if the menu offers five points for a stormwater redistribution system, if the system would cost an estimated $250,000, the per-point cost would be $50,000. With this method, it is easier to compare items and determine a mix of specific features that will achieve certification at the least cost or within a certain budget.

Cheverton suggested the smartest thing developers can do is hold an integrated design meeting – called a charrette – at the outset. This can help sharpen the developer's goals for the project, identify possible green/sustainable building features and practices and the cost/limitations (budget, technical) of each, and develop a better design. Typical attendees include the developer/owner, general contractor, major subcontractors, energy consultant, and others.

Funds may be available to help pay for these. Enterprise, for example, each month awards $5,000 charrette grants to sponsors planning to develop affordable housing projects to Green Communities standards. Enterprise also offers no-interest loans of up to $35,000 for early pre-development costs, and larger planning/construction grants of up to $75,000. The 2009 application deadline for these larger grants is 4/20/09 *(go to http://www.greencommunitiesonline.org)*.

Incentives, Funding Sources

A variety of governmental and private-sector incentives are available to developers and owners to help defray the costs of green and sustainable features and renewable energy equipment incorporated into real estate projects, including multifamily rental housing.

At the federal level, a tax deduction is available to owners of new or existing commercial buildings, of up to $1.80 per square foot for the cost of efficiency measures placed in service before 2013 that reduce by at least 50% the annual

Green,
continued on page 13

Green,
continued from page 12

energy usage of a building. These can be improvements to a building's heating, cooling, hot water, or interior lighting systems, or the building envelope.

There are also federal energy tax credits, which can be used by the developer or owner or syndicated to raise equity.

One of the most popular incentives has been the solar investment tax credit (ITC). This credit is equal to 30% of the cost of qualified equipment (e.g., solar panels) that uses solar energy to generate electricity (photovoltaic, or PV systems), to heat or cool, to provide solar process heat (such as solar thermal, to heat water), or to power fiber optic lighting distribution systems. Solar equipment to heat swimming pools or hot tubs is ineligible.

Additional types of renewable energy equipment are eligible for the 30% ITC (e.g., small wind turbines), and others are now eligible for a 10% ITC (e.g., geothermal heat pumps, combined heat and power systems), some due to changes made by the American Recovery and Reinvestment Act (ARRA).

ARRA also repealed a prior $4,000 annual credit cap for the 30% ITC for small wind property, as well as a prior requirement that any ITC be reduced if the energy property is financed by tax-exempt private activity bonds or a subsidized financing program.

Also available is a federal energy production tax credit (PTC). Unlike the ITC, which is claimed all in the first year and pegged to the cost of the equipment, the PTC is claimed annually over 10 years and based (a specified number of cents per kilowatt hour) on the amount of electricity produced during the year by qualified renewable energy facilities (e.g., wind, geothermal, hydropower, biomass). ARRA extended the placed-in-service deadlines to year-end 2010 for wind and year-end 2013 for other facilities.

Abromowitz said one owner of multiple assisted rental housing projects is exploring the possibility of installing small co-generation equipment at the buildings "to capture more energy efficiency." Co-generation entails capturing the heat and steam that would otherwise be lost or wasted to create

Green,
continued on page 14

Green,
continued from page 13

electricity that can then be used at the property or – if state law permits – sold back to the grid.

In addition to federal incentives, many states offer tax incentives or rebates for energy conservation improvements or for renewable energy. In addition, many utility companies offer rebates. A comprehensive listing may be found at http://www.dsireusa.org.

Federal Funds

ARRA also provides large new sums of federal funds that may be used to finance energy efficiency improvements in public housing properties and assisted private rental properties under programs administered by the U.S. Department of Housing and Urban Development (HUD). *(For details, see* Tax Credit Advisor, *March 2009, p. 1, also go to http://www.hud.gov/recovery)*

For instance, HUD will be holding a competition to award $1 billion to public housing agencies (PHAs) for eligible activities that could include energy retrofits to public housing.

In addition, HUD has until 4/17/09 to publish a notice that will spell out the application process and other details for a competition it will hold to award $250 million as loans or grants to owners of eligible HUD-assisted rental projects (e.g., Section 202, 811), to make energy and green retrofit investments. ■

People in the News

***Larry Curtis**, Managing Partner of WinnDevelopment, Boston, MA, is the new president of the National Housing & Rehabilitation Association, a national trade group for affordable multifamily rental housing industry professionals. Other NH&RA newly elected officers are: Vice President **Deborah Koehler**, Sage Partners, LLC, Tampa, FL; Vice President **Bernard Husser**, MMA Financial, Boston, MA; Vice President **Jerome Breed**, Bryan Cave, Washington, DC; Treasurer **John Weld Peck**, Peck, Shaffer & Williams LLP, Cincinnati, OH; and Secretary **David Abromowitz**, Goulston & Storrs, P.C., Boston, MA*

***Carol Galante** has been appointed as Deputy Assistant Secretary for Multifamily Housing Programs at HUD. She is currently the president of BRIDGE Housing Corporation, a California nonprofit affordable housing developer,*

***Grant Whitaker** is the new president and chief executive officer of the Utah Housing Corporation.* ■

Housing Credit Yields Continue to Rise

THE LOW-INCOME housing tax credit (LIHTC) equity market appears likely to remain muted at least for a number of months, even as projected yields to investors ramp upward rapidly.

As was the case in 2008, many active investors – still mostly financial institutions and insurance companies – prefer to invest more directly and through proprietary funds and less through national multi-investor funds established by syndicators. *(See p. 16 for the latest edition of Corporate Tax Credit Fund Watch.)*

Nonetheless, some national multi-investor funds are still out there. Richard Floreani, of Ernst & Young LLP, said his firm is reviewing about six national multi-investor funds, ranging in anticipated final size from $50 million to $120 million. They have projected after-tax yields to investors ranging from 8.25% to 9%, though Floreani said some of the funds now at 9% initially had lower yields.

Syndicator Stephen Daley, of The Richman Group, anticipated a final closing by his firm within two months on a current national multi-investor fund sized a bit over $100 million that will have a "good concentration" of properties in the New York City area. The new fund, with a projected yield of 9%, is Richman's first national fund since a $110 million fund that closed last August.

Daley said fund yields generally are rising to attract new equity. At higher yields, he said Richman's seen "heightened interest" from investors, particularly non-CRA investors.

Daley said the new fund has expected average pricing to developers for identified properties in the low- to mid-70s (cents per credit dollar), compared to an actual average of 89 cents for the previous fund.

Chicago syndicator Joe Hagan, of National Equity Fund, Inc., said NEF is coming out now with a new national multi-investor fund with a target size of $100 million that needs to close by June. "We have very, very soft circles [from investors] for about half," he said.

New York syndicator Ryan Sfreddo, of Centerline Capital Group, said his firm currently doesn't have a national multi-investor fund on the street, but plans to come out with one later this year. "We are actively pricing and closing deals for our various proprietary funds – that's really been our focus," he said.

The low-income housing tax credit (LIHTC) equity market appears likely to remain muted at least for a number of months, even as projected yields to investors ramp upward rapidly.

Those interviewed said tax credit investors are requiring, and receiving, higher yields, along with larger and longer guarantees and larger reserves from developers.

Floreani estimated about $5.5 billion in total housing credit equity was raised in calendar 2008. He didn't have a projection of 2009 volume, noting there are currently too many variables and unknowns. Two unknowns are the impact of the new LIHTC credit exchange and gap financing programs, and whether Congress will approve further favorable housing credit program amendments this year.

Some early signs, though, suggest 2009 equity volume could be less – if current conditions stay the same and Congress doesn't pass legislation enabling investors to fully utilize their existing housing credits and to make the tax credit more attractive to investors.

At a March conference sponsored by the National Housing & Rehabilitation Association, executives of major LIHTC investors Bank of America and JP Morgan said they expect to invest less in tax credits in 2009 than in 2008. Marianne Votta, of Bank of America, said the bank invested more than $1 billion in various tax credits (federal housing, historic, solar credits) in 2008. But she suggested the bank's tax shelter appetite in 2009 will likely be smaller this year, for several reasons. B of A had a smaller profit in 2008 than in 2007, it acquired financially challenged firms Merrill Lynch and Countrywide in 2008, and it will inherit on April 1st more than $600 million in tax credit investments from Merrill Lynch.

Patrick Nash, of JPMorgan Capital Corporation, said his firm invested over $1 billion in housing credits in 2008. "We're not going to do that much this year," he noted. The firm in 2008 acquired loss-heavy Washington Mutual and inherited its $900 million housing credit portfolio.

A number of syndicators also raised much less housing equity in 2008 than in 2007, due primarily to fewer and smaller national funds and investors that curtailed their investment. ■

CORPORATE TAX CREDIT
Fund Watch – *April 2009*

ERNST & YOUNG LLP

Sponsor (1) Investor Contact Acquisitions Contact	Current LIHTC Corporate Fund: Fund Type	Geographic Focus	Tax Credit Equity Raised to Date - Current Fund	Expected Size of Current Fund	Average Net Tax Credit Price	Cash Needs Basis IRR	# of Properties Specified	% of Gross Proceeds Specified (3)	Estimated Front End Expense Load (4)	Total Equity Raised Since Inception (2)	Total Equity Raised in 2008	Tax Credit Units/ Properties Under Asset Management
Boston Capital Kevin Costello (617) 624-8550 Brenda Champy (617) 624-8874	*Boston Capital Corporate Tax Credit Fund XXXI* multi-investor	National	$60M	$153M	$0.81	7.50%	32	100%	7.50%	$5.5B	$404M	129,606/2,215
Enterprise Community Investment, Inc. Doug Able (410) 772-6005 Kari Fitzpatrick (503) 553-5720	*Enterprise Housing Partners XIX Limited Partnership* multi-investor	National	NA	$150M	NA	NA	NA	NA	NA	$7.4B	$682M	94,215/1,578
Enterprise Community Investment, Inc. Doug Able (410) 772-6005 Kari Fitzpatrick (503) 553-5720	*Enterprise Green Communities West L.P.* multi-investor	CA, OR, WA, CO	NA	$75M	NA	NA	5	NA	NA	$7.4B	$682M	94,215/1,578
Great Lakes Capital Fund Vicki D. Mincey (517) 364-8922 Jennifer Everhart (517) 364-8911	*Great Lakes Capital Fund for Housing Limited Partnership XVIII* multi-investor	WI, IL, MI, IN	$1M	$60M	$0.83	9.00%	20	NA	8.00%	$1.1B	$111.4M	25,579/469
Michel Associates, Ltd. Elizabeth Ronayne (617) 261-4646 x29 Peter Talbot (207) 775-4400	*Countryside Corporate Tax Credits XVIII Limited Partnership* multi-investor	National	NA	$100M	$0.76	10.25%	27	100%	NA	$300M	NA	10,000/284
PNC MultiFamily Capital Todd Crow (502) 581-3262 Bob Courtney (502) 581-3260	*PNC MultiFamily Capital Institutional Fund XLI Limited Partnership* multi-investor	National	NA	$150M	$0.81	9.00%	30	100%	8.00%	$5.0B	NA	104,504/1,404
Raymond James Tax Credit Funds Steve Kropf (800) 438-8088 Craig Descalzi (800) 438-8088	*Raymond James Tax Credit Fund 35* multi-investor	National	$0	$100M	$0.78	9.00%	12	75%	8.00%	$2.3B	$300M	53,000/1,100
RBC Capital Markets Tax Credit Equity Group Michael Riechman (216) 875-6054 Craig Wagner (980) 233-6459	*RBC Tax Credit Equity National Fund 11, L.P.* multi-investor	National	$0	$73M	$0.80	9.00%	11	100%	6.76%	$2.7B	$532M	38,822/461
The Richman Group Affordable Housing Corp. Stephen Daley (740) 321-1355 David Salzman (203) 869-0900, x333	*U.S.A. Institutional Tax Credit Fund LXXII, LP* multi-investor	National	$0	$125M	$0.74	9.00%	14	100%	8.80%	$6.4B	$350M	81,213/1,085
WNC & Associates, Inc. Sy Garban (800) 286-1135, x160 Michael Gaber (800) 286-1135, x130	*WNC Institutional Tax Credit Fund 30* multi-investor	National	NA	$100M	NA	9.00%	10	70%	NA	$2.35B	$367M	52,208/1,024

1) All data has been provided directly by the fund sponsors. Accordingly, neither Ernst & Young LLP nor *The Tax Credit Advisor* take any responsibility for the accuracy of the data or any calculations made by the sponsors. 2) The data on tax credit equity raised to date for all offerings (since 1987) applies to programs for corporate and individual investors. However, the survey of current funds includes only investment programs designed for corporate investors. 3) The gross equity needed for properties for which an executed syndication contract is in place, as a percentage of total expected gross proceeds, assuming all single-payment cash investors. 4) The estimated expense load is the percentage of gross proceeds the sponsor expects to expend for offering costs and expenses, acquisition fees and expenses, brokerage commissions and all other front-end costs (other than working capital reserves) assuming all available units are sold to single-payment cash investors. If you would like to have a fund listed in the next edition of *The Tax Credit Advisor*, call Lisa Watson, Affordable Housing Services, Ernst & Young LLP, at lisa.watson@ey.com, (617) 585-0423. There is no charge for a listing.

ARRA,
continued from page 1

Under the credit exchange program, HCAs will be able to turn in a portion of their unused housing credits to the U.S. Treasury Department for cash grants, which they can then use to provide financial assistance ("subawards") to projects with or without housing credit awards that have funding gaps.

Under the gap financing program, called the Tax Credit Assistance Program (TCAP), HCAs will be able to use federal funds accessed from the U.S. Department of Housing and Urban Development (HUD) to provide financial assistance to fill funding gaps in projects that have received or that receive credits in federal fiscal years 2007, 2008, or 2009.

In both programs, HCAs and developers receiving assistance will be up against specified deadlines for committing and expending the funds. *(For background on details of two programs, see* Tax Credit Advisor, *March 2009, p. 1.)*

HUD took the first step to implement TCAP in late February when it announced the allocation amounts – totaling $2.25 billion nationwide – for each of 50 states, the District of Columbia, and Puerto Rico. The allocations ranged from $325,877,114 for California down to $4,846,908 for Wyoming *(see p. 18 for state-by-state allocations)*.

The next step will be for HUD to issue a notice, expected shortly, announcing the availability of the funds and setting out programmatic and federal cross-cutting requirements, and instructing HCAs on what they must do before they can access and distribute the funds. This notice will likely be posted on a new recovery act Web page created by HUD *(http://www.hud.gov/recovery/index.cfm)*.

Industry participants hope HUD's notice will also provide guidance and clarity on certain TCAP program requirements. Some questions include whether HCAs can award TCAP funds to projects as loans as well as grants; whether grants will create taxable income to the project owner; what HCAs must do to satisfy the requirement that awards be competitive; and whether states must first amend their current qualified allocation plan (QAP).

ARRA,
continued on page 18

ARRA,
continued from page 17

Issuance of guidance by the Internal Revenue Service and/or Treasury is the next critical step for implementation of the credit exchange program. At a minimum, HCAs need to find out how to exchange 9% housing credits to Treasury for cash grants. But again, HCAs and the industry hope for more guidance and clarification.

The IRS/Treasury guidance, including procedures, might not be issued for a number of weeks, and might be issued in stages.

Some questions include whether subawards to projects may be made as loans as well as grants; what developers must do to demonstrate they've made a "good faith" effort to obtain tax credit equity; whether federal Davis-Bacon prevailing wage rates will apply to exchange fund-assisted projects [they will to TCAP-assisted projects]; and what states must do to determine how a subaward to a project without a credit allocation will increase the total funds available to the state to build and rehabilitate affordable housing.

State Agency Actions

Since the stimulus act was signed on 2/17/09, state housing credit agencies while awaiting federal guidance have informed their stakeholders about the new TCAP and credit exchange programs, issued notices about their tentative plans, and met with developers, syndicator/investors, and others to solicit comments and suggestions.

"They've been spending a lot of time trying to determine how they will use the new funding," said Garth Rieman, of the National Council of State Housing Agencies. In addition to meeting with stakeholders, he said HCAs have been trying to determine which federal rules will apply to the funds and the implications, and trying to determine what priorities they will establish as far as "which projects they will award funds to and under what circumstances."

"They're trying to do everything they can to get ready to apply for the funds and use them as quickly as possible," said Rieman, who expects all state HCAs to participate in both programs.

Washington, DC attorney Anthony Freedman, counsel to several HCAs, said he's raising questions with state agencies, urging them to think about how they might satisfy the asset management requirement under both programs, and advising them to look at their pipelines and decide how they might want to make the funds available to projects. "I'm offering them thoughts on how to leverage those funds, and [how] to use those funds to leverage private equity," said Freedman, a partner in Holland & Knight LLP. "A mix of exchange funds or TCAP funds and private equity can make a project stronger and can increase the return to investors, and therefore help bring more private equity into the market – that's what I'd like to see."

Deborah VanAmerongen, Commissioner of the New York State Division of Housing and Community Renewal (DHCR), said she's "delighted" with the two new LIHTC funding resources. She indicated that DHCR will go ahead and award TCAP funds

ARRA,
continued on page 19

ARRA Tax Credit Assistance Program State-By-State Allocations

State Housing Finance Agency	TCAP Grant Amount
Alaska	$5,490,631
Alabama	$31,952,086
Arkansas	$20,463,053
Arizona	$32,308,066
California	$325,877,114
Colorado	$27,349,670
Connecticut	$26,170,888
District of Columbia	$11,644,346
Delaware	$6,608,893
Florida	$101,134,952
Georgia	$54,481,680
Hawaii	$9,861,610
Iowa	$18,978,542
Idaho	$8,753,622
Illinois	$94,676,979
Indiana	$38,048,333
Kansas	$17,121,110
Kentucky	$31,616,176
Louisiana	$39,383,397
Massachusetts	$59,605,630
Maryland	$31,701,696
Maine	$10,690,750
Michigan	$63,974,711
Minnesota	$28,434,123
Missouri	$38,687,026
Mississippi	$21,881,803
Montana	$7,818,360
Nebraska	$11,380,566
New Hampshire	$8,269,787
New Jersey	$61,243,670
New Mexico	$13,876,558
Nevada	$15,184,795
New York	$252,659,616
North Carolina	$52,152,687
North Dakota	$4,860,574
Ohio	$83,484,547
Oklahoma	$25,723,568
Oregon	$27,343,971
Pennsylvania	$95,050,396
Puerto Rico	$42,646,082
Rhode Island	$11,933,403
South Carolina	$25,384,973
South Dakota	$5,405,055
Tennessee	$39,032,515
Texas	$148,354,769
Utah	$11,639,074
Virginia	$44,247,749
Vermont	$5,416,546
Washington	$43,010,192
Wisconsin	$35,594,904
West Virginia	$16,541,848
Wyoming	$4,846,908

Source: U.S. Dept. of Housing and Urban Development

ARRA,
continued from page 18

where needed, but will probably take a wait-and-see attitude about participating in the credit exchange program and consider doing so just on a case-by-case basis for projects as a last resort.

VanAmerongen noted that the timing of the new resources is fortuitous to DHCR. She said DHCR has awarded all its 2008 credits, has committed $6.6 million of its 2009 credits to projects, and is in the midst of reviewing 120-plus applications received in its 2009 funding round to select for awards. She anticipated DHCR will award all of its remaining $22.6 million in 2009 credits, and has all the information it needs on the proposed projects to consider and approve for gap funding awards, once the federal guidance comes out. She expected that DHCR will utilize in-house staff for asset management functions for both programs.

In New York State, another $16.1 million in 2009 credit authority was suballocated to the New York City Department of Housing Preservation and Development (HPD); VanAmerongen said DHCR is talking and coordinating on the new resources with HPD and with two city and state agencies that run active tax-exempt multifamily housing bond programs.

Anxious to Participate

LIHTC developers and others are anxious for the start-up of the two new programs.

Matthew Greer, CEO of Miami, FL-based Carlisle Development Group, Florida's largest LIHTC developer, expects to pursue TCAP or exchange funds for at least some of his roughly 12 pending Florida projects that have tax credit awards. Some have started construction; others haven't. Some have equity commitments. Others had equity commitments once, but lost them. "That's sort of when you start to try to make a determination of whether you hold out for an equity commitment, or whether to start looking for opportunities to exchange credits under the new program or to receive the TCAP subsidy sources," Greer said.

He also indicated he's experienced the rescission of a previous commitment of state soft second mortgage funds to a workforce housing project, due to state budget legislation that recaptured from the Florida Housing Finance Corporation millions of dollars of

ARRA,
continued on page 20

ARRA,
continued from page 19

previously appropriated funds.

Greer welcomed the new funding sources, but hoped they will be infused in projects to supplement private tax credit equity, in order to preserve the public-private partnership model that he and other sources said has been the foundation of the LIHTC program's success.

Alexandria, VA-based developer Patrick Sheridan, of nonprofit Volunteers for America, indicated that some of his current LIHTC projects might be candidates for the new funding sources. "At the current time," he said, "we have six projects across the country that are allocated credits that we don't have an investor for." These projects are in five states.

Sheridan said VoA has investor interest for most of the deals but no hard letter of intent with a fixed credit price. "My suspicion is we're going to have a gap on the financing because of the low [credit] price," he said. "As such, if we can access some of the [TCAP] gap funds or the refunded credits that the state might have, that would be our ideal situation."

Cynthia Lacasse, of John Hancock Realty Advisors., Inc., a direct investor, described the additional TCAP and credit exchange program funds as "positive" for the LIHTC market. "What we're seeing anecdotally – we talk to developers every day – it that they're exploring their options," she noted. Lacasse said John Hancock doubled its annual tax credit investment volume to about $100 million in 2008, but doesn't yet have a target for 2009. "We're basically processing out pipeline, and then we're stepping back and watching what's happening, [being] cognizant of our specific need for tax credits, and taking a breather," she said.

Lacasse, though, said there was nothing in the stimulus act's provisions to motivate her firm to increase its investment in housing credits. She noted her firm, though, would have benefited from enactment of the proposal – not included in the act – that would have allowed investors to go back five tax years to fully utilize their housing credits.

Chicago syndicator Joe Hagan, of National Equity Fund, Inc., felt the two new LIHTC funding sources should go a long way toward helping to "clear out" the stalled projects with 2007 and 2008 tax credit awards that haven't been able to get funded, and to help fund about 40% of the 2009 credit deals. Hagan said with the extra subsidies many deals can probably make sense at 80 cents, noting LIHTC pricing for most deals now is probably 70 to 76 cents. Hagan said HCAs could use the new dollars to fill funding gaps in stalled projects, facilitate conservative underwriting, and allow for a higher yield to investors that serves to attract private equity.

He warned developers that they won't get 85 cents per credit dollar if they turn in their credits to state agencies, but rather something less. Eight-five cents is what HCAs will receive from Treasury for each dollar of credit they exchange.

Possible Complexity

Hagan said states' credit exchange programs could be "incredibly complicated." HCAs that participate in the program will have to make decisions about which projects they will require or allow to turn in credits and from what year(s); how much if any unused 2009 credits to exchange; whether to provide assistance just to the projects that returned credits or to other projects; the form in which they will provide assistance; criteria and priorities for selecting projects for assistance; whether to provide credit exchange dollars to projects alone or in combination with other resources (e.g., TCAP, credits, other); whether to assist tax-exempt bond-financed projects; and more.

"We're kind of grasping at straws here [now], without having a road map on how a lot of this is going to get done," said David Gasson, of syndicator Boston Capital and spokesman for the Housing Advisory Group.

Speaking at a March conference of the National Housing & Rehabilitation Association, syndicator Ronne Thielen of Centerline Capital Group said one possible approach states might take would be to put TCAP funds into deals with 2007 or 2008 credit awards to get them under construction, and then give the developer a specified time to find an equity investor. If the developer doesn't find one, the state could take back the credits from the developer and provide exchange funds. If the developer finds an investor, the state agency could leave some TCAP dollars in the deal to supplement the private equity and take back the rest. Thielen said investors would be more interested with this approach because they wouldn't bear construction risk. ■

Historic Rehabilitation

Maryland Historic Credit Produces Economic and Environmental Benefits

MARYLAND'S STATE HISTORIC rehabilitation tax credit program has yielded not only economic benefits but also environmental and sustainability benefits, according to a new report published by the Abell Foundation. The foundation supports various efforts to counter poverty and serve the disadvantaged in the Baltimore area.

The report on the Maryland Heritage Structure Rehabilitation Tax Credit comes as the state legislature mulls improvements to the program.

The study says Maryland's program, established in 1996, "is well established as a community revitalization engine, a key element in the renewal of downtowns and older established communities across the state…. Less recognized…is the role of the tax credit in reinforcing smart growth, lowering greenhouse gases, improving water quality, saving greenfields, lowering demand for landfill space, and making better use of existing infrastructure. In short, the historic preservation tax credit program is an environmental-economic development win-win."

Maryland's program offers developers and homeowners a state tax credit equal to up to 20% of eligible rehabilitation costs for historic commercial (i.e. income-producing) properties and owner-occupied homes.

"Combined with federal historic preservation tax incentives in a similar amount," the report says, "the state program has provided a powerful incentive for recycling older, underutilized, and economically obsolete buildings into new uses: abandoned warehouse and manufacturing structures have become exciting office space for entrepreneurial new companies; economically and functionally obsolete office buildings have become upscale apartments bringing new residents to formerly struggling downtown areas."

In its first 12 years, the program has facilitated redevelopment of 407 historic commercial structures involving $923 million in total rehabilitation expenditures, and $213.9 million in state historic credits. According the report, Maryland leads all states in the number of historic contributing structures located in National Register and local historic districts, about 97,610 statewide.

The Impact

The report says the completed commercial projects generated more than $1.74 million in total economic activity in the state, employed 15,120 persons earning $673.1 million, and created 9,248 on-site construction jobs with wages of $443.4 million. The projects also generated an estimated $83.7 million in state and local taxes.

But what is also impressive in the study is the environmental impact. "Our analysis demonstrates that each $1.0 million in historic tax credits results in significant environmental benefits," the study says.

According to the report, the preservation of an existing urban structure reduces vehicle miles traveled (VMTs) compared to a new suburban development by as much as 75% – about 86% of the commercial state rehab tax credit projects have been in Baltimore City.

Historic preservation projects tend to be both energy-efficient and in locations that encourage non-automotive means of access and egress, "yielding dual energy conservation benefit." A 50,000-square-foot building that reduces VMTs by 40% and building energy use by 30% cuts carbon monoxide production by the equivalent of taking 35 cars off the road.

The study says there is a common misperception that older buildings are less energy-efficient than newer buildings. But federal data indicates that pre-1920 buildings are about as energy-efficient as buildings constructed in 2000-2003. The worst energy offenders

Maryland,
continued on page 22

Maryland,
continued from page 21

are 1970s and 1980s structures.

"The reasons that historic structures are relatively energy-efficient," says the report, "have to do with the use of materials that are superior insulators, use of natural ventilation, as well as siting/orientation for efficient heating and cooling in the pre-conditioning era."

Rehabilitation projects don't expend as much energy as new construction projects; preserve green space; avoid the need for new infrastructure expenditures; reduce storm water runoff; improve water quality; curtail new waste (i.e. buildings are preserved rather than demolished); and foster health benefits.

(Report: http://www.abell.org/publications/index.asp)

Pending Legislation

The Abell report notes activity under Maryland's state historic program, heavy in 1996-2002, fell sharply after the commercial property program was cut back during 2002-2004. In 2001, 75 projects with nearly $304 million in rehab costs were completed; in 2005, there were only 20 projects with costs of $32.8 million.

Identical bills (H.B. 309, S.B. 258) pending in Maryland's state legislature would extend the state's historic tax credit program through 6/30/14 and authorize the award over this period of up to $100 million in state historic credits for commercial projects on a first-come, first-served basis. The bills would also increase the state credit to 25% for green commercial historic rehab projects, and bar the award of more than 75% of the commercial credits to any one county or Baltimore City. A state House committee held a hearing on 3/5/09. The legislation reflects proposals made recently by Maryland's governor. ■

Leverage of Maryland Tax Credits Impact on 20% Commercial Credit

	Per $1.00 of Credit
Total Economic Output	$8.53
Employee Compensation	$3.30
State & Local Tax Receipts	$0.41
Construction Wages (On-Site)	$2.18

	Per $1.0 Million in Credits
Total Employment (Jobs)	72.5
Construction Jobs (On-Site)	45.5

Source: Abell Foundation report

Forget About the Apple; Teachers Get a Break On Rent at New Baltimore Development

ARE YOU A TEACHER? If so, you can get great break on your monthly rent at the new Miller's Court development in Baltimore, MD.

Public education – and rewarding the professionals who contribute to it – is the theme of this $21.9 million historic rehabilitation project, which is utilizing new markets and historic tax credits.

"We bought the building with the intent of having a mixed-use project that allowed for 40 one-, two-, and three-bedroom units that were marketed and geared for teachers new to Baltimore," said developer Donald Manekin, of Seawall Development Corp. "It's been a pretty successful project, in terms of the user groups as well as the community as a whole."

Baltimore-based Seawall, formed by Donald Manekin and his son Thibault, began work on the project in mid-2008. "We're really finishing up the project now," says the father. Residents and office tenants will move in early this summer.

Customized Development

In addition to the 40 apartments, the 80,000-square-foot development will include 31,000 square feet of office space and 1,000 square feet of retail space. Manekin said about half the apartments have been pre-leased, mostly to existing or incoming new Baltimore city public school teachers. All but 3,000 square feet of office space has been leased to nine different nonprofit organizations that Manekin said "are underpinning the success of the school system."

Manekin, who noted he and his son believe in doing real estate around being socially conscious, indicated that Miller's Court reflects their background and interest in public education in Baltimore, and a desire to address the needs of the city's school system and educated-related nonprofits.

Manekin said Baltimore's public school system hires hundreds of new teachers each year, many of them recruited through nonprofit groups – like Teachers for America and the Baltimore City Teaching Residency – and who move to Baltimore to start their career with no idea of where to live. In addition, Manekin said there are 25 to 30 nonprofit groups that are key to the school system's success that are scattered at different locations, paying multiple office landlords market rents, without any economies of scale.

The premise of Miller's Court was to develop a project that provides both affordable housing for new teachers, and reasonably priced office space for education-related nonprofits in a facility customized to meet the needs of both user groups.

Miller's Court,
continued on page 24

CDFI Outlines Plans for Awarding Extra New Markets Credits

The Community Development Financial Institutions (CDFI) Fund has issued an implementation plan describing how it plans to award $3 billion in extra federal new market tax credits and other funds provided by the economic stimulus act.

The Fund will use $1.5 billion of the additional NMTC authority to make allocation awards to additional organizations that competed in the 2008 funding round and were "highly rated" but didn't receive an award. It anticipates announcing about 30 awards in May. The Fund will not provide any of the extra credits to any 2008 awardees. The Fund said it won't solicit or accept additional materials from eligible applicants, but rather will contact them to ask about any material changes.

The Fund will another $1.5 billion in extra NMTC authority to the initial $3.5 billion available in its current 2009 funding round, which has an application deadline is 4/8/09. The Fund expects to make about 100 awards with announcements in October. The Fund on 3/23/09 issued an amended notice for the 2009 funding round with some revisions (http://www.cdfifund.gov).

The Fund also described how it plans to award additional stimulus act funds for its CDFI Financial Assistance and Native American CDFI Assistance award programs, and mentioned various stimulus act reporting requirements.

The plan can be found on a CDFI Fund Web page that displays all information relating to the Fund's implementation of the stimulus act (http://www.cdfifund.gov/recovery). ■

Miller's Court,
continued from page 23

Manekin said six existing teachers from Teachers for America helped design the project. He noted the development will include a fitness center for apartment and office tenants, a "mini-Kinko's" where the resident teachers can make copies of next day's lesson plan for students, and a coffee shop. In addition, for the office tenants, there will be a common break area/lunch room/kitchen, plus conference and training rooms available to them as an amenity. A former loading dock between the two buildings has been converted into an outdoor sitting area with a fire pit. And parking will be provided on lots surrounding the project, some leased from railroad giant CSX.

Manekin said teachers will get a "fairly deep discount" on the rent compared to non-teacher tenants. For example, the projected initial monthly rent for a one-bedroom apartment will be $700 for teachers and $1,000 for others. For two-bedroom units, teachers will get a break of $650.

The loft-style apartments, contained within an historic brick former manufacturing plant, will feature exposed brick, high ceilings, skylights, timber joists and columns and beams, and a washer/dryer in each unit. "We've kept as much of the old architecture as possible," Manekin said. "Our goal was to create an environment for those young professionals that are, in fact, making a significant difference in Baltimore."

The project will boast numerous "green" features. Manekin said LEED Gold certification is being sought.

Historic Property

Miller's Court is an area straddling the Remington and Charles Village neighborhoods of Baltimore, in a gritty section characterized by lots of residential row houses and warehouse and manufacturing buildings. "It's been an area that's been pretty devoid of any real estate investment for a long period of time," says Manekin.

The property is rich in history and is listed on the National Register of Historic Places. The oldest building, constructed in 1874, and an addition built in 1910, were occupied from 1884 to 1953 by H.F. Miller and Sons, which manufactured tin cans. After 1953 the property evolved to multi-tenant use as warehouse and manufacturing space. From 1990 to 1992 the U.S. Census Bureau rented two floors, but since 1992 the property was vacant, eventually becoming an eyesore. "It looked pretty beaten up, broken windows, and the neighborhood was complaining to the city," said Manekin.

Seawall secured the acquisition of the property in October 2007, after buying the note on it from local 1st Mariner Bank and foreclosing on the previous owner/developer.

Manekin said Seawall didn't have difficulty getting approval of the historic rehab plans for the project from the National Park Service and state historic preservation office – necessary to qualify for

Miller's Court,
continued on page 25

Miller's Crossing,
continued from page 24

the federal historic rehabilitation tax credit. In fact, he said the prior owner had already drawn up plans for an historic rehab project, so Seawall only had to get approval of amendments for areas of the building it planned to do differently than the prior owner. As far as window replacement goes, that was no problem – all the windows were gone. Manekin said the installed new energy-efficient windows match "pretty closely to what was there."

The developer has had to undertake some environmental remediation work at the site, including abatement of lead paint in the building and soil contaminated by previous oil tanks. The project has received some assistance for this effort from the city's brownsfield program.

Funding Sources

Miller's Court is being financed by multiple tax incentives and funding sources. Tax incentives include the federal new markets tax credit (NMTC) and historic tax credit, and the Maryland state historic tax credit.

Much of the financing is being generated by the NMTC. Two community development entities (CDEs) are involved. Enterprise Community Investment, Inc. (ECI) provided a $9.4 million allocation of NMTC authority that is being channeled to the project from an equity investment made by US Bancorp Community Development Corporation, a NMTC and historic credit investor in the transaction. Additional NMTC and historic credit equity investment has been made by SunTrust CDE, which provided a second allocation of NMTC authority.

Rendering of Miller's Court, Baltimore, Maryland

Other funding sources include loans from the city and state and a deferred developer's fee. Manekin said the city has agreed to provide 10-year property tax relief.

Manekin said Miller's Court is his second NMTC project, and his first with Enterprise. Joe Wesolowski, ECI Vice President for Structured Finance, said Enterprise decided to participate in the project because it felt it will have a substantial positive impact on the surrounding neighborhood. In addition, he indicated that the project's green and sustainable features fit with Enterprise's objective to have a "green overlay" in all of its programs and activities.

Manekin anticipated that Miller's Court will have a "ripple" effect on the neighborhood.

Wesolowski said the project has created probably 80 to 100 construction jobs. Original projections also estimate the creation of 55 and retention of 156 permanent jobs.

The project is located in a census tract defined as "highly distressed" under the NMTC program. Traits include a poverty rate of 29%, a median family income equal to 44% of the area median family income, and a jobless rate 1.74 times the national rate.

Wesolowski said Miller's Court, which is near Johns Hopkins University, represents a "great use" of the NMTC program, and "hopefully will be a catalyst for other development in that corridor. When you look around – at least when I was last there – you don't see anything going on."

Manekin suggested the project has already caused a lift, and noted Seawall is looking at some additional potential opportunities in the neighborhood. "The property owners that surround us now think that the value of their residences and businesses have increased," he says. Plus, he continues, "the city's paying attention to the neighborhood." ■

Washington and State Update

State Briefs

Oregon Law Boosts Funds for Housing

Oregon Gov. Ted Kulongoski has signed into law a bill (H.B. 2436) establishing a new dedicated funding source for affordable housing activities in the state. The measure, signed 3/12/09, raises the existing document recordation fee by $15 with this increase dedicated for use in various programs administered by the state housing finance agency. Seventy-six percent of the new funds are to be spent for multifamily rental housing new construction or rehabilitation programs. The new funding source is expected to generate about $15 million during 2009-2011.

(http://www.leg.state.or.us)

California Releases Proposed Rules

The California Tax Credit Allocation Committee on 3/17/09 released for public comment two sets of proposed regulations for its low-income housing tax credit program. One set would create a new regulation section incorporating the two new housing credit funding resources established by the economic stimulus act. The second set would make clarifying changes to the final tiebreaker provisions for competitive credit awards. The Committee released the proposals because of the anticipated quick time frame for implementation of the two new funding resources once federal guidance is received.

(http://www.treasurer.ca.gov/ctcac) ■

CAPITAL BRIEFS

HUD Allocates New Funds from Economic Stimulus Act

The U.S. Department of Housing and Urban Development (HUD) on 2/25/09 announced allocations of $10.1 billion in funds provided by the economic stimulus act for projects and programs overseen by the Department. This was 75% of the stimulus act funds for HUD; the Department said the remaining 25% in funds will be awarded by competition "in the coming months."

The allocations include $2.25 billion to 52 state housing credit agencies for the new Tax Credit Assistance Program *(see p. 1 for related article)*; $2.985 billion in formula grants to 3,134 public housing agencies for public housing modernization and improvement projects; $2 billion for renewal of 6,300 project-based Section 8 contracts with 12-months' funding; and other sums for Community Development Block Grants, Native American Housing Block Grants, and other activities. A description of the funds and allocation amounts to recipients is posted on a new HUD Web site recovery act page.

(http://www.hud.gov/recovery/index.cfm)

Neighborhood Stabilization Funding Approved

HUD on 3/19/08 announced approval of nearly $731 million in funding under the Neighborhood Stabilization Program (NSP) to 40 states and local communities for use to purchase and recycle foreclosed and abandoned homes and properties in distressed communities. The new awards include $145 million for a plan submitted by the state of California.

HUD also said that it will issue a funding notice with application requirements no later than 5/3/09 for an additional $2 billion provided by the economic stimulus act for NSP competitive awards.

(http://www.hud.gov/news/release.cfm?content=pr09-025.cfm)

Census Releases New Population Data for Metro, Other Areas

The U.S. Census Bureau has released revised population estimates, as of 7/1/08, for the nation's metropolitan and micropolitan statistical areas and counties. The new figures reflect the greatest one-year percentage population growth in the South and West.

Ninety-four of the 100 highest-growth counties (population 10,000 or more) were in the South or the West. Raleigh-Cary, NC and Austin-Round Rock, TX, were the fastest growing metro areas between 2007 and 2008, at 4.3% and 3.8%, respectively.

Four metro areas grew by more than 100,000 residents during the year: Dallas-Fort Worth (147,000); Houston (130,000); Phoenix (116,000); and Atlanta (115,000).

(http://www.census.gov/Press-Release/www/releases/) ■

National Housing & Rehabilitation Association

The Association For Tax Credit Developers

Real estate development, particularly affordable housing, historic rehabilitation and New Markets Tax Credit transactions, is a challenging, knowledge-intensive, and relationship-driven enterprise. It requires up-to-the-minute knowledge and collaboration with top-notch professionals.

That's where the National Housing & Rehabilitation Association comes in. Since 1971, NH&RA has provided a forum for the most sophisticated real estate developers. Whether it's issues of financing techniques, equity investment, deal structuring, asset management, subsidy allocations, project design, management operations or new development opportunities, you'll get the information here.

NH&RA members recognize the value of sharing information. We meet quarterly for serious discussions of all the significant issues affecting our business. Designed to foster relationships, our meetings and conferences are renowned for their combination of cutting-edge information and opportunities to network and socialize.

Our members know they can count on meeting the most dynamic individuals in the business and on being up-to-the-minute on the latest trends. They frequently attest to the growth they have experienced in their business as a result of the relationships gained through participating in NH&RA.

UPCOMING CONFERENCES

NH&RA/National Council of Affordable Housing Market Analysts
2009 Spring Public Policy and Market Study Forum
April 6-7, 2009
Washington, DC

National Housing & Rehabilitation Association
2009 Spring Developers Forum
May 11-12, 2009
Hyatt Regency Century Plaza
Los Angeles, CA

KEY MEMBERSHIP BENEFITS INCLUDE:

- Unlimited Access to HousingOnline.com, a members one-stop information resources on affordable housing, historic rehabilitation and new markets tax credit development
- Subscription to *HousingOnline Weekly*, NH&RA's dynamic e-newsletter delivered to your desk or mobile device
- Access to NH&RA's Members-Only LinkedIn Group. LinkedIn is a business-oriented social networking site that allows its users to stay connected with colleagues and professional contacts.
- Industry updates on breaking news that affects affordable housing, historic rehabilitation and new markets tax credit development
- Opportunity to participate in NH&RA Councils including the Historic Tax Credit Development Council, New Markets Tax Credit Council, National Council of Affordable Housing Market Analysts, HOPE VI Steering Committee, Council for Energy Friendly Affordable Housing and Developers Council *(participation in the Developers Council is restricted to Developers Only)*
- Discounts on registration fees for NH&RA, NCAHMA & CEFAH conferences
- Discounts at the NH&RA Store including subscriptions to *Tax Credit Advisor*, conference recordings, article reprints, digital downloads and more…
- Networking opportunities with top level members of the industry
- Industry representation on key regulatory and legislative issues

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Tel. 202-939-1753 / Fax 202-265-4435 / tamdur@dworbell.com

Potomac,
continued from page 1

very excited to live anywhere close to where they work."

Daniel R. Abramson, president of the Alexandria Housing Development Corporation (AHDC), a nonprofit affiliated with the city, calls the development a model for future collaborations between municipalities, private developers, and nonprofit affordable housing developers.

AHDC is developing the project, called The Station at Potomac Yard. When completed, the $24.7 million mixed-use development will contain 64 affordable and "work force" apartments, two levels of underground parking, and 1,500 square feet of retail space. The four-story development will sit atop a separate $7.6 million state-of-the-art, LEED-certified firehouse owned by the city. The city believes the retail space will likely be occupied by a coffee shop, dry cleaner, bank, or small office.

The development has been recognized by multiple awards, including a 2008 Excellence in Public-Private Partnership Award from the U.S. Conference of Mayors.

Need for Affordable Housing

McIlvaine notes a growing need for affordable housing in the city of Alexandria; it's lost roughly 10,000 affordable units in the past decade to condo conversions, rising rents, and redevelopment.

The historic city of about 137,000 competes with other communities in the Washington, DC metropolitan area for employees, housing, and transportation. According to McIlvaine, the city has had few opportunities to build modern affordable housing that offers more than the current stock of older developments with one- and two-bedroom apartments or efficiencies.

The new project had its origin in 2004, when Potomac Yard Development LLC (PYD), a joint venture formed by national builders Pulte Homes Inc. and Centex Corp., acquired a 167-acre tract of land located along Route 1 in the city – a former railroad yard known as Potomac Yard. PYD's original plan was to redevelop the site into an urban village center comprised of office, commercial, hotel, and residential spaces.

But during a 2006 review of the proposed urban center project, city officials raised questions about the impact of PYD's plan on Alexandria's emergency services. In response, PYD agreed to donate a small parcel of land and $6.6 million to construct the city's first new fire station in 30 years. The city contributed another $1 million to pay for a fourth bay in the 24,800-square-foot station, which will store hazmat equipment purchased after 9/11.

The new fire station and The Station at Potomac Yard will occupy a small part of the 167-acre tract, which when completed by PYD will include over two millions square feet of commercial/retail space and about 1,600 residential units.

Mix of Credit, Market-Rate Units

AHDC was designated by the city in May 2007 to develop, manage, operate, and maintain the residential component of The Station at Potomac Yard.

When completed, the development will include 44 low-income housing tax credit apartments (8 one-bedroom, 33 two-bedroom, 3 three-bedroom) and 20 market-rate or work force apartments (4 one-bedroom, 15 two-bedroom, one three-bedroom). "We expect to have a model unit ready for the public on July 13," McIlvaine said. "We expect the units to be fully leased by October, with everything fully occupied before the end of the year."

Projected initial monthly rents for the one-bedroom apartments are $995 for tax credit and $1,418 for market-rate units; two-bedroom units, $1,185 and $1,550; and three-bedroom units, $1,360 and $1,855.

Tax credit rents will be affordable to tenants earning 60% or less of the area median income (AMI). Sixty percent of AMI for a one-person household is $41,340; two persons, $47,220; three persons, $53,160; and four persons, $59,040.

The tax credit unit rents will be

Potomac,
continued on page 29

Potomac,
continued from page 28

based on tenants paying no more than 30% of their income, according to Jim Chandler, Director of LIHTC Programs at the Virginia Housing Development Authority (VHDA). Chandler, though, acknowledged that tenants earning below 60% of AMI will likely pay more than 30% of income toward rent.

Workforce units will be restricted to households earning 80% or less of AMI, according to AHDC documents.

'Affordable housing is one of the city's great, largely unmet needs. We've had tremendous interest from people, from employees who work for the city, who would be very excited to live anywhere close to where they work.'

Funding Sources

The development has utilized multiple funding sources.

The biggest single piece is $8.6 million in housing credit equity, generated by the syndication of the housing credits by RBC Capital Markets. VHDA made an award of roughly $1 million in 9% housing credits for the project.

"We were fortunate to get a good price for our credits when we went to closing last fall," said Abramson, who noted that credit markets have been in turmoil since then.

Rendering by LeMay Erickson Wilcox Architects

Rendering of The Station at Potomac Yard, Alexandria, Virginia

In addition, VHDA issued $4.85 million in taxable bonds to fund a 35-year mortgage at 7.6%, and provided another two, below-market loans for the project (35 years each, at 5.05% and 2.55%) totaling $3.5 million. Loans were made under VHDA's SPARC (Sponsoring Partnerships and Revitalizing Communities) program, which is funded through VHDA's REACH (Resources Enabling Affordable Community Housing) program.

Other sources included $880,000 in deferred developer fees from AHDC, and roughly $7.5 million from the city's Housing Trust Fund, from a more than $10 million contribution being made by PYD to the Trust Fund.

The tax credit units must be maintained as affordable housing for 30 years. The development can be sold to AHDC or another nonprofit organization after 15 years, said Chandler.

Chandler said the project's application scored well in competing for a housing credit allocation, due to local support, affordability, special amenities, energy efficiency, number of family-sized units, and other program criteria. The residential component was designed to meet EarthCraft certification guidelines for energy efficiency, which brings additional points under VHDA's housing credit program competition.

Steps have been taken to minimize noise for apartment residents living above the new fire station. The area above the fire truck bays will be used as terrace space. In addition, McIlvaine said the fire trucks won't turn on their sirens in the residential neighborhood. Also, studies have found that living above the fire station won't cause undue excess noise for the residents. The neighborhood, now mostly commercial, already has noise from heavy traffic and nearby Reagan National Airport. ■

– Stephen K. Cooper

Fair Housing,
continued from page 1

Such municipal practices may violate the federal Fair Housing Act (FHA).

What are the Fair Housing Act (FHA) provisions of greatest use to developers facing municipal opposition? Two lawsuits being litigated by my firm highlight ways to enforce FHA rights in creative ways.

Enacted in 1968, the FHA broadly prohibits housing discrimination on the basis of race, color, religion and national origin (the original "protected classes").[1] It applies to all kinds of housing (whether federally funded or not) and prohibits both intentional discrimination and neutral policies and practices that have a harsher effect on members of a protected class. The FHA permits any party affected by discrimination – including developers – to sue for monetary damages and injunctive relief. Developers around the country have successfully challenged discriminatory barriers to the expansion of affordable housing.

The FHA also requires the U.S. Department of Housing and Urban Development (HUD) to administer its funding programs "in a manner affirmatively to further the policies of [the FHA]." The obligation to affirmatively further fair housing (AFFH) applies to every dollar of every HUD program, regardless of how many times it is passed on to another recipient. All 50 states and more than 1,150 local governments that are direct recipients of Community Development Block Grant and HOME funds have AFFH obligations, as do several thousand that receive such funds from state allocations or urban county consortia. The federal courts have repeatedly explained that the AFFH obligation requires recipients to take affirmative steps to identify and overcome all impediments to fair housing choice in their geographic boundaries, whether caused by government or by the private sector.

When developers are facing deadlines imposed by the LIHTC program or other funding sources, the legal leverage available through the FHA's non-discrimination and AFFH provisions may be critical to dismantling municipal barriers. Because of ongoing work in the cases mentioned below, municipalities are much more concerned about their potential liability under the FHA for zoning and land use provisions that delay the development of affordable housing. Increasingly, LIHTC developers and their legal counsel will be able to build on the momentum of these cases to resolve development disputes without litigation.

Pending Litigation

My firm represents the plaintiffs in *Greater New Orleans Fair Housing Action Center v. St. Bernard Parish*,[2] which began with an FHA challenge to an ordinance restricting rentals of single family homes to "blood relatives" of the owner. Because the parish is 93% white, the ordinance had the effect of excluding people of color from the rental market. The matter was

Fair Housing,
continued on page 31

[1] The FHA was amended in 1973 to prohibit discrimination on the basis of sex, and amended in 1988 to prohibit discrimination based on familial status and disability. There are, therefore, seven "protected classes" under the FHA.

[2] No. 2:06-CV-07185 (E.D. La. Motion to enforce consent decree and motion to intervene filed Dec. 22, 2008).

[3] The case is designated No. 06-CV-2860 in the U.S. District Court for the Southern District of New York. A copy of the February 24, 2009, decision and related materials are available at http://www.antibiaslaw.com/wfc.

Study Describes State LIHTC Anti-Economic Segregation Efforts

A new report describes the steps and policies that some state agencies have taken in their low-income housing tax credit (LIHTC) programs to avoid locating new projects in neighborhoods of concentrated poverty and economic segregation, but instead to try to approve sites that expand opportunities for the renter households that live in credit properties.

The study talks about policies designed to prevent LIHTC projects approved by state credit agencies from being located in neighborhoods of extensive poverty or without shopping, public transit, educational, and other facilities that offer quality of life opportunities for low-income households.

The study was published by the Poverty & Race Research Action Council and the Lawyers' Committee for Civil Rights Under Law.

The report, which examined LIHTC qualified allocation plans in all states, found that some state agencies have tried to foster economic desegregation by barring too many credit projects in certain neighborhoods, by restricting LIHTC development in certain areas, and through other policies.

Building Opportunity: Civil Rights Best Practices in the Low Income Housing Tax Credit Program, is posted at http://www.prrac.org. ■

Fair Housing,
continued from page 30

resolved in February 2008 by a consent order requiring the parish to repeal the ordinance and providing that the parish would not "otherwise make unavailable or deny a dwelling unit, to any person because of race or national origin" or "retaliate against Plaintiffs or any other person who alleges that Defendants have violated the Fair Housing Act."

Five months later, in the face of strong community opposition, the parish adopted a moratorium on all multifamily housing developments. We were contacted by, and now represent, Provident Realty Advisors (PRA), whose four LIHTC projects were stopped in their tracks by the moratorium. PRA has intervened in the lawsuit to press its own claims under the FHA that the moratorium diminishes housing opportunities for African-Americans in greater New Orleans, who are more likely to live in rental housing on account of their lower incomes. PRA has asked the court to proceed directly to a determination of whether the moratorium is a violation of the consent order, which can be punished as contempt of court. By building on the legal platform constructed by an advocacy organization and its law firm, the developer has shaved at least a year off the time necessary to litigate its claims.

My firm is also litigating *United States ex rel. Anti-Discrimination Center v. Westchester County, New York*,[3] a civil rights case brought under the federal False Claims Act (FCA). In an opinion dated February 24, 2009, a federal judge determined that, during a six-year period, the county had falsely certified more than 1,000 times that it was in compliance with its obligation to analyze and overcome race-based impediments to fair housing choice when, in fact, the county ignored these impediments altogether. All that remains for a trial, currently scheduled for early May 2009, is the question whether the County "knowingly" made these false certifications. The FCA provides for treble damages, permits a private party to sue in the name of the United States, and awards up to 30% of the damages awarded to the private party that ferrets out the fraudulent behavior and litigates the case. The county took in $52 million over a six-year period, so the lawsuit seeks damages of $156 mil-

Fair Housing,
continued on page 32

Fair Housing,
continued from page 31

lion plus attorney's fees.

During the litigation, we have uncovered information about how the county perpetuated racial segregation by permitting wealthier, predominantly white towns and villages to impose zoning and land use policies and practices that made multifamily development impossible and effectively steered LIHTC developments to disadvantaged neighborhoods with high minority populations and diminished opportunities. As a result, the county has remained dramatically segregated on the basis of race, and millions in federal funds have been used to perpetuate, rather than dismantle, segregation.

The *Westchester* litigation has gotten the attention of thousands of municipal recipients of federal housing funds, who are concerned about their own potential liability for AFFH violations. Every one of these recipients is required to involve the public in an "Analysis of Impediments" to fair housing choice, and to take a hard look at how its own policies discourage such choice. Municipalities whose zoning, land use and building ordinances or practices discourage affordable housing for members of FHA protected classes are required to identify such impediments and take appropriate actions to overcome them. Those who fail to do so face suspension or termination of federal funds and potential liability under the FCA. LIHTC developers should benefit from this increased apprehension to secure municipal cooperation on affordable housing projects.

Michael Allen is Counsel with the civil rights law firm of Relman & Dane, PLLC. The firm specializes in fair housing and fair lending issues, and has extensive experience working with affordable housing developers to overcome community opposition and zoning and land use barriers. He may be reached at 202-728-1888, mallen@relmanlaw.com. ■