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TaxCreditAdvisor

News, Ideas and Information for Tax Credit Developers and Investors

Issue Theme: Green Building

House Approves Extenders Bill; Final Action Appears Delayed Until 2010

SUPPORTERS OF THE FEDERAL low-income housing, new markets, and historic rehabilitation tax credits relished partial victory in December as the U.S. House of Representatives approved an "extenders" bill (H.R. 4213) containing favorable provisions. But as Congress moved toward adjournment, it appeared virtually certain that final action by Congress on these provisions and on possible additional improvements will not occur until early 2010.

Extenders,
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The 'New and the Next' in Green And Sustainable Development

IT'S NO SURPRISE THAT green building and sustainability have become a key part of the affordable housing industry. Most if not all state housing agencies provide incentives or requirements in their low-income housing tax credit (LIHTC) programs for proposed projects with these features. In addition, the recession and higher energy costs have fostered even greater importance on leaner utility costs in multi-family rental developments.

Less clear, though, is the set of likely future trends in the field of green and sustainable development. Without doubt, these trends will influence which projects attract equity, debt financing, and subsidies and get built.

Washington, D.C. attorney Jeffrey Lesk, took at stab at this in comments at a recent Washington conference sponsored by the Institute for

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Congress Approves FY 2010 Appropriations Bill for HUD

CONGRESS HAS GIVEN FINAL passage to a consolidated appropriations bill (H.R. 3288) containing funding for the federal fiscal year (FY 2010) ending 9/31/10 for the U.S. Department of Housing and Urban Development (HUD) and for numerous other departments and agencies. The measure was sent to President Obama on 12/15/09 for his signature.

H.R. 3288 boosts total annual funding for HUD by 12%, to $46.5 billion. Increases are provided for project- and tenant-based rent subsidies, development of supportive rental housing for elderly and disabled persons (Section 202, 811), public housing, community development block grants, homeless assistance grants, and certain other programs.

The measure also increases funding for the HOPE VI public housing revitalization program from $120 million to $200 million. But $65 million of these new HOPE VI dollars are earmarked for the Choice Neighborhoods Initiative, a new program proposed by the Obama Administration that is intended to replace and build on the HOPE VI program.

Congress still must pass enabling legislation to formally establish the Choice Neighborhoods program. H.R. 3288 also includes funds for other proposed new HUD programs: Sustainable Communities Initiative, Rural Innovation Fund, University Community Fund, and Energy Innovation Fund. The last will be used for pilot programs to finance creative energy-efficiency activities involving multifamily and single-family housing.

The bill directs HUD to issue notices within 60 days after H.R. 3288 is signed to solicit applications for the FY 2010 funds for HOPE VI and the Section 202 and 811 programs.

H.R. 3288 doesn't provide any funds for the national Housing Trust Fund.

President Obama in October signed a separate bill providing FY 2010 funding for federal rural housing and community development programs. ■

Comparison of Approved FY 2010, Enacted FY 2009 Appropriations

(in millions)

HUD Programs	Enacted FY 2009 Appropriation	Approved FY 2010 Appropriation
Tenant Based Rental Assistance	$16,817	$18,184
Project-Based Rental Assistance	$7,100	$8,551
Public Housing Capital Fund	$2,450	$2,500
Public Housing Operating Fund	$4,455	$4,775
HOPE VI	$120	$200
Choice Neighborhoods Initiative (1)	–	$65 *
Energy Innovation Fund (1)	–	$50
HOME Investment Partnerships	$1,825	$1,825
Community Development Block Grants	$3,642	$3,990
Sustainable Communities Initiative (1)	–	$ 150
Rural Innovation Fund (1)	–	$25
University Community Fund (1)	–	$ 25
Native American Housing Block Grants	$645	$700
Housing Opportunities for Persons with AIDS	$310	$335
Homeless Assistance Grants	$1,677	$1,865
Housing for the Elderly (Sect. 202)	$765	$825
Housing for Persons With Disabilities (Sect. 811)	$250	$300
HUD Total	**$41,500**	**$46,509**

** Included in $200 million for HOPE VI; (1) Proposed new program.*

Low-Income Housing Tax Credit

What's Ahead for the LIHTC Market in 2010? Answer Rests on Key Outcomes But There Are Encouraging Signs

THE OUTLOOK FOR THE low-income housing tax credit (LIHTC) market in 2010 is difficult to predict because of two key questions.

Nonetheless, there are some encouraging signs. Two major corporate investors expect to invest the same if not more in housing credits in 2010 as in 2009. And some industry participants believe that LIHTC investment yields to investors and credit pricing to developers may already have stabilized in some areas.

The year 2009 was arguably the most volatile and toughest for the LIHTC industry since the program's inception in 1987. Credit prices continued a free fall, yields jumped, and there was a severe shortage of equity as many investors scaled back their investing or left the market entirely. Many developers were unable to get any or sufficient equity, and many projects stalled.

In the spring, Congress provided a lifeline, enacting the Tax Credit Assistance Program (TCAP) and Section 1602 credit exchange program, providing billions of federal dollars for stalled LIHTC projects to enable them to move forward. It took months for federal agencies to issue full guidance for the programs and for state housing credit agencies (HCAs) to issue their own guidelines and procedures for selecting projects for assistance. But in the past couple months, state agencies have been making awards to projects in droves and getting the dollars out the door. A November survey by the *Tax Credit Advisor* found that 44 responding agencies so far had awarded nearly $4.2 billion in TCAP and exchange funds for 1,195 projects.

Two Key Questions

So what's ahead in 2010?

The answer will depend heavily on the answers to two questions. First, what if any proposed tax law changes affecting the LIHTC and housing bonds that are now before Congress will be enacted? And second, what will be the strength and timing of the economic recovery?

At press time, it appeared highly likely that Congress will extend the exchange program for another year for at least "9%" housing credits. Advocates, though, hope that lawmakers, by no later than early 2010, also approve other pending proposed tax law changes designed to significantly boost LIHTC equity invest and bring new investors into the market. These include an extension of the carryback period for existing and future LIHTC investments to five

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We're Changing Our Look!

Keep your eye out for the next, February 2010 issue of the *Tax Credit Advisor*. With our next issue we will be changing to a new design and format, intended to make the publication more readable and eye-appealing.

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Equity,
continued from page 3

years, and modification of the passive loss rules to enable owners of additional types of business entities to benefit from housing credit investments. The full carryback change as proposed would enable current investors to fully utilize their existing LIHTC investments and require them to make new investments, and provide another carrot to entice first-time investors *(see p. 1 for legislative article.)*

The pace and strength of the economic recovery is another key factor. If the recovery becomes robust in the first part of the year, including for the financial services sector, increased corporate profits would likely mean greater demand for LIHTC investments.

LIHTC syndicator Joe Hagan, of Chicago-based National Equity Fund, Inc. (NEF), expects that, assuming the exchange program is extended, there will be greater investor demand for housing credits in 2010. He felt that, in general, investment yields to investors will not rise any further and will start to fall. "I think that next year there's more investors coming in, and we're going to have equilibrium back [in] supply and demand," he said.

Hagan estimated that the typical current yield to investors is about 10.5%, and typical credit pricing to developers somewhere between 62 and 70 cents (per dollar of credit), for "normal" markets, areas outside high CRA demand markets like New York City and parts of California. In high CRA markets typical prices are higher and yields lower.

Action by Major Investors

Meanwhile, two of the largest active LIHTC investors expect to do the same if not more volume in 2010.

Patrick Nash, of JPMorgan Capital Corporation, Chicago, anticipated that JP Morgan will make between $650 million and $750 million in LIHTC equity investments in 2010, compared to the $650 million expected for 2009 by year-end.

Beth Stohr, of US Bancorp Community Development Corporation, St. Louis, was hopeful for an increase in the amount that US Bank invests in housing credits in 2010 compared to 2009. She didn't give a dollar figure for a 2010 budget target, noting US Bank's budget figures relate to the amount of tax credits needed and purchased, rather than the dollar amount of equity investment. Still, Stohr said US Bank each year typically makes about $1 billion in equity investments in transactions utilizing federal housing, historic rehabilitation, new markets, and renewable energy tax credits.

Stohr expected US Bank's 2009 LIHTC investment volume by year-end to be "flat" compared with 2008.

Equity providers said they are extremely busy in December trying to close additional LIHTC investments. They noted that closings have been delayed this year for several reasons. One is the considerable time it took to get the TCAP and exchange programs fully operational after they were enacted. The second

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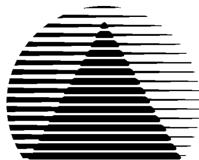

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is delays caused by the increased complexity in structuring deals that have economic stimulus funds, particularly TCAP dollars, because of tax, control, and other issues that need to be resolved.

As a consequence, Nash said JP Morgan's 2009 LIHTC investment total would be less than the roughly $750 million invested in 2008. But he noted the company's closing schedule is extremely busy for January and February.

Nash expected that the pattern (i.e. execution methods) by which JP Morgan invests in housing credits will remain about the same in 2010 as in 2009. This is roughly 85% through direct investments in projects and though investments in proprietary funds run by syndicators, and about 15% in syndicators' multi-investor funds. Similarly, Stohr expected US Bank's current pattern to continue in 2010, about two-thirds through direct investments and one-third in multi-investor funds – a reversal of the breakdown in 2007. Stohr noted that US Bank is exploring the possibility of also investing in proprietary funds, "but we're not there yet."

Multi-Investor Funds

Even though their market share is smaller now, there are still national and regional multi-investor funds on the street. Richard Floreani, of Carlisle *Tax Credit Advisor*s LLC, Boston, said the company is reviewing six of nine current multi-investor funds for client investors.

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STRATFORD
CAPITAL GROUP

Stratford Capital Group is pleased to announce the closing of approximately $70 million in Low-Income Housing Tax Credit ("LIHTC") equity in 2009. Listed below are a sample of the 4% and 9% LIHTC transactions we completed during the year.

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COLUMBIA, SOUTH CAROLINA
$3,400,000
9% LIHTC Equity
Acquisition/Rehabilitation
Senior/110 Apartment Units

APPIAN WAY APARTMENTS
N. CHARLESTON, SOUTH CAROLINA
$3,007,898
4% LIHTC Equity
Acquisition/Rehabilitation
Family/204 Apartment Units

GEORGIA COMMONS APARTMENTS
WASHINGTON, D.C.
$7,028,000
4% LIHTC Equity
New Construction
Family/130 Apartment Units

THE GATES AT CORAL BAY
WAVELAND, MISSISSIPPI
$11,258,000
4% LIHTC Equity
New Construction
Family/160 Apartment Units

SCHOOL STREET APARTMENTS
ATHOL, MASSACHUSETTS
$10,709,000
9% LIHTC Equity
Acquisition/Historic Rehabilitation
Senior/50 Apartment Units

THE MUSES
NEW ORLEANS, LOUISIANA
$9,641,000
4% LIHTC Equity
New Construction
Family/211 Apartment Units

LITCHFIELD TERRACE APARTMENTS
LEOMINSTER, MASSACHUSETTS
$4,563,000
4% LIHTC Equity
Acquisition/Rehabilitation
Family/216 Apartment Units

GRAND BOULEVARD LOFTS
KANSAS CITY, MISSOURI
$9,182,000
4% LIHTC Equity
Acquisition/Historic Rehabilitation
Family/134 Apartment Units

John M. Nelson, IV Chairman and CEO
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These six funds range in size from $40 million to $170 million, with projected yields from 10% to 13%.

The most recent edition of *Corporate Tax Credit Fund Watch*, prepared by Ernst & Young LLP, shows seven current multi-investor funds (six national, one regional) with projected yields from 10% to 13% and average credit pricing for specified properties from 58 to 80 cents *(see p. 8 for chart)*. A year ago, the *Corporate Fund Watch* chart had data for 10 multi-investor funds with projected yields from 7.5% to 8.95% and average credit pricing from 77 to 87 cents.

Hagan, who expected NEF's total LIHTC equity raise for 2009 by December 31st to be between $400 million and $450 million, said NEF's business model has changed this year. "We're doing strictly proprietary funds right now." NEF has closed only one national multi-investor fund in 2009, down from the several a year in the past.

Equity providers said they are extremely busy in December trying to close additional LIHTC investments. They noted that closings have been delayed this year for several reasons.

Hagan said NEF has had four new investors in 2009, including three – all insurance companies – new to housing credits.

Separately, Goldman Sachs announced a $61 million investment in a proprietary LIHTC fund managed by the New York Equity Fund, which is run jointly by NEF's parent, the Local Initiatives Support Corporation, and by Enterprise Community Investment, Inc.

Goldman's investment, made through its Urban Investment Group, will help finance LIHTC projects containing about 500 units in Harlem, Brooklyn, and the Bronx. The city is also providing funds through the New York City Department of Housing Preservation and Development. ■

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In the last twelve months alone, three of the largest tax credit investors have completely withdrawn from the market. Syndicators have gone out of business. Others have scaled back their investments due to a lack of capital. The result of this is the first major downward shift in tax credit pricing since the tax credit program began in 1987.

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Two Developers Take Different Approach In a Tough Environment

Low-income housing tax credit (LIHTC) developers Robert Greer and Matthew Schwartz are taking different paths in today's tough market.

Greer, of The Michaels Organization, a multi-unit real estate firm that has developed LIHTC and HOPE VI projects in 29 states, says the company is submitting lots of housing credit applications and is successfully garnering equity directly from investors.

Schwartz, principal of The Domain Companies, New York City, is just doing preliminary planning for some potential future LIHTC projects, and developing other kinds of deals while he waits for the equity market to recover.

The Michaels Organization, based in Marlton, N.J., has a housing development company, property management firm, asset management company, military housing outfit, construction company, and relatively new tax credit syndication entity. "We are selling all of our credits directly to [regional and local] banks," said Greer. "We're getting pricing in the high 70s, which makes these deals happen."

Greer's company, though, is making further adjustments. Because of its many proposed LIHTC projects and the extra equity needed, the company is beginning to reach out as well to national banks for direct investments. Greer said his company is also beginning to other kinds of additional financing sources for projects that "we've never used before," such as green building funds and various state-sponsored programs.

Greer said the company is hiring, adding to its syndication, asset management, and construction staff, and bringing in more developers.

Finally, one of the company's biggest activities today is purchasing portfolios of general partner (GP) interests from other LIHTC developers. "We're buying many different companies, taking over their portfolio as a GP, taking the management business, and increasing our portfolio," says Greer.

The Domain Companies, by contrast, doesn't currently have any LIHTC applications in the hopper, and is just planning for some possible future projects. "We have a number of projects that we're working on putting together, but we're not at the application point," said Schwartz.

The company, which specializes in developing housing projects with a mix of affordable and market-rate apartments, closed its last batch of LIHTC projects more than a year ago, before credit pricing tumbled. Schwartz said land prices and construction costs in New York City haven't fallen to the point where new deals are viable.

The Domain Companies, though, is developing and financing other kinds of projects using the federal new markets tax credit (NMTC). In November, it closed and began construction of an NMTC-assisted neighborhood strip retail center in New Orleans. This will support a $55 million mixed-use NMTC project across the street that was previously completed by The Domain Companies. This project, called Crescent Club, has 228 mixed-income apartments plus some retail space. Leveraged loan funds came from Capital One and the local redevelopment authority. Capital One is also the NMTC investor. ■

Estimated Timetable Given for 2010 NMTC Round

DONNA GAMBRELL, Director of the Community Development Financial Institutions (CDFI) Fund, outlined the tentative timetable for the 2010 funding round for the federal new markets tax credit (NMTC) program, in a speech on December 10.

She said the Fund anticipates the 2010 funding round to open next spring and for allocation awards will be announced in December 2010. Of course, a 2010 funding round is contingent on Congress passing legislation to extend the program beyond 2009. A House-passed bill would do this *(see p. 1 article)*.

Gambrell also said the allocation application that will be revised in time for the 2010 round. She indicated that the Fund hopes to come up with a different approach from how the NMTC program's related party rules are currently applied, noting at present their application discourages equity investment and complicates transactions.

She noted that for the one-year period ending 11/30/09, Community Development Entities will have raised 27% less in capital than in the preceding one-year period, putting 2009 on track to be the first year in which the volume of investments in CDEs has declined from the prior year.

(Speech: http://www.cdfifund.gov/speeches/Gambrell-2009-10-NMTCC-AnnualConference.asp) ■

CORPORATE TAX CREDIT

Fund Watch – January 2010

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 to Date	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 XXXII* multi-investor	National	$112M	$150M	$0.69	10.00%	26	100%	7.50%	$5.6B	$306M	131,715/2,245
Michel Associates Elizabeth Ronayne (617) 261-4646, x29 Peter Talbot (207) 775-4400	*Countryside Corporate Tax Credits XIX Limited Partnership* multi-investor	National	NA	$54.75M	$0.62	13.00%	12	100%	8.00%	$302M	$3M	10,000/285
PNC Multifamily Capital Todd Crow (502) 581-3262 Bob Courtney (502) 581-3260	*Fund XLIII* multi-investor	National	$100M	$125M	$0.73	11.00%	20	100%	8.00%	$4.5B	$240M	126,600/1,503
Raymond James Tax Credit Funds Steve Kropf (800) 438-8088 Craig Descalzi (800) 438-8088	*Raymond James Tax Credit Fund 35* multi-investor	National	$25M	$50M	$0.78	12.00%	7	100%	7.00%	$2.6B	$300M	60,000+/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 – 12, L.P.* multi-investor	National	$85M	$100M	$0.80	10.00%	19	100%	8.00%	NA	NA	NA
The Richman Group Affordable Housing Corp. Stephen M. Daley (740) 321-1355 David Salzman (203) 869-0900, x333	*USA Tax Credit Stimulus Fund, LP* multi-investor	Concentration in IA and PR	$0	$130M	$0.58	13.00%	21	100%	3.00%* * with 10% GP carry interest	$6.7B	$360M	83,579/1,110
WNC & Associates, Inc. Michael Gaber (800) 286-1135, x130 Darrick Metz (888) 798-0557	*WNC Institutional Tax Credit Fund 32* multi-investor	National	NA	$100M	NA	11.00%	10	75%	NA	$2.17B	$170M	53,524/1,052

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.

Mixed-Income Senior Apartment Complex Rises on Site of Historic Former Tuberculosis Hospital

PARK LANE AT SEA View has a rich history.

Since the mid-1800s, the Staten Island, N.Y. site at various times has been used as a municipal poorhouse, sanitarium for tuberculosis patients, and even a pioneer museum.

Today, part of the property is occupied by a $29.6 million historic rehabilitation project offering 104 mixed-income apartments for seniors plus services and amenities. Placed in service in May 2009, Park Lane at Sea View was developed by a joint venture of The Domain Companies, The Arker Companies, and the Metropolitan Council on Jewish Poverty. Funding sources included federal tax credits, debt, and state and local assistance. Park Lane at Sea View was a finalist project in the 2009 competition for the J. Timothy Anderson Awards for Excellence in Historic Preservation, sponsored by the National Housing & Rehabilitation Association.

Staten Island has the highest percentage of seniors of any of New York City's five boroughs. Until the new project, however, senior rental housing options were limited to older HUD Section 202 senior apartment projects and full-service assisted living facilities.

"Park Lane represents a new model in senior living for Staten Island and will afford Staten Island seniors with the flexibility to design a housing and service program to fit their individual needs," Matthew Schwartz, principal of The Domain Companies, said at the ribbon-cutting. Rafael E. Cestero, Commissioner of the New York City Department of Housing Preservation and Development, lauded "the first historical preservation initiative on Staten Island to use green building practices to create first-class, mixed-income rental housing for seniors."

Park Lane at Sea View, Staten Island, New York

Housing Plus Services

The development contains 63 one-bedroom, 12 two-bedroom, and 29 studio unit apartments Fifty-two units are reserved for low-income residents making 60% or less of the area median income (AMI), or roughly $32,000 for an individual and $36,800 for a couple. The remaining apartments are restricted to residents making no more than 165% or 180% of AMI. The initial monthly rents ranged from $807 to $1,036 for low-income tenants and from $1,036 to $1,590 for moderate-income residents.

Free amenities include a fitness center and fitness instructors, a computer center with Internet access, five libraries, a clubhouse, a dining room, and laundry rooms. The property also offers a unique "a la carte" services package. Residents can design a services package to fit their individual needs and budget, choosing from meals, housekeeping, and/or laundry for additional charge.

The project occupies two renovated Spanish Mission-style historic buildings, listed on the National Register of Historic Places, first constructed in 1912 and 1932. The site was originally developed in the mid-1800s as the New York City Farm Colony, a municipal poorhouse, and converted in the early 1900s for use as the Sea View Tuberculosis Hospital. The hospital was created to house and treat tuberculosis patients, in

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Park Lane,
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the belief that the fresh air at the site – the city's highest point – would aid treatment of the disease. The cure for tuberculosis was discovered at the hospital in the 1960s.

In 1974, after a new geriatric hospital building was dedicated, Sea View's focus shifted to long-term care and rehabilitation, and most of the 25 historically significant structures that made up the original hospital facility were closed. One building continued on as Stiversa Bethel Museum, the first health care museum in New York State. But the remaining structures were abandoned and eventually fell victim to severe decay and vandalism. The city tried five times over the years to redevelop the site and buildings, without success.

However, in 2004, the city made another attempt and through a competitive process selected the development team of The Domain Companies, The Arker Companies, and the Metropolitan Council on Jewish Poverty. Their proposal, for Park Lane at Sea View, entailed the historic rehabilitation and adaptive re-use of two of the original hospital buildings – a former dormitory for nurses and one of the 17 "cottage" buildings where patients once resided. The developers acquired the site through a 99-year subsidized lease with the New York City Health and Hospitals Corporation. The site is part of the 70-acre campus of the Corporation's Sea View Hospital and Rehabilitation Center and Home, a 304-bed long-term care facility. The campus in turn is within a protected natural district, the 2,200-acre Staten Island "Green Belt."

Funding Sources

A mix of funding sources and subsidies financed the $29.6 million development.

A major chunk was more than $14 million in equity provided by New York-based syndicator Centerline Capital Group, from the syndication of federal low-income housing tax credits and historic rehabilitation tax credits received for the project.

Additional sources included a construction loan from Bank of America that converted to a Fannie Mae permanent mortgage, a sizable soft loan (30 years, zero interest)

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Assisting the Development Community

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Park Lane,
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from the New York City Department of Housing Preservation and Development, deferred development fees, and a soft loan from the New York State Energy Research and Development Authority. The Authority's soft loan helped pay for energy efficiency features; Park Lane at Sea View is the first historic rehabilitation project assisted by an Authority program that supports the development of "green" affordable housing.

The project also received 30-year property tax relief through the city's J-51 Program.

Schwartz said the project closed in 2007 and received pricing for the housing and historic credits in the "high 90s" in cents per credit dollar.

Development Challenges

Schwartz said multiple design and environmental issues had to be addressed in developing the project. The environmental issues largely stemmed from the site's location in the special natural district.

The design challenges centered around how to renovate the historic buildings in a way that would facilitate the reuse of the structures as modern apartments for seniors, yet also be capable of winning approval from the state historic preservation office (SHPO) and National Park Service of the rehab plans, which is necessary to qualify a project for the federal historic tax credit.

Schwartz said both the nurses' residence building, which contains 96 of the new apartments and all the amenities, and the cottage, had to be reconfigured to create modern apartments.

The former nurses' residence building had small housing units along corridors on the structure's three upper floors, with a narrow wooden door at the entrance to each unit. The Park Service insisted on keeping the corridors and wooden doors, even though the original housing units were very small, the doors spaced close together, and the doorways too narrow to meet code. A Dallas-based interior design firm developed the solution, which involved keeping the corridors, restoring the wooden doors but sealing them, and installing functional new doorways that provide the entrance to each unit but stand out from the sealed doorways due to the hallway carpeting pattern. The entire interior of the building, other than the corridors and wooden doors, was gutted in order to create the apartments and common spaces. The building's remaining original windows were removed, restored off-site, and reinstalled.

In addition, the land on one side of the building had to be excavated to allow natural light on the first floor, to accommodate residential use. The excavation created two courtyards that are used as gardens by residents where they grow fresh foods, flowers, and herbs. The developers had to get the Park Service and SHPO to approve the excavation, since this would be a substantial alteration of the building, but succeeded with an argument that the building couldn't be reused efficiently for residential apartments, and the deal wouldn't work, without the excavation. ■

Park Lane at Sea View – Source and Uses Summary

SOURCES *	
Historic Tax Credit Equity	$9,321,423
Low-Income Housing Tax Credit Equity	$5,269,000
First Mortgage	$5,200,000
Soft Loan – NYCDHPD	$8,000,000
Soft Loan – NYSERDA	$300,000
Deferred Development Fees	$1,575,295
Total Sources	**$29,665,718**

USES	
Acquisition Costs **	$1
Hard Costs	$22,689,610
Architecture/Design/Historic Consulting	$1,017,679
Financing Costs	$700,601
Soft Costs	$1,462,590
Development Fees	$3,795,238
Total Uses	**$29,665,718**

** Financing includes 30-year tax abatement/exempt through city J-51 Program.*
*** Property acquired through 99-year subsidized lease.*

Green Building

Bills Would Establish New Incentives for Utility Savings in Assisted Projects

TWO RECENT BILLS introduced in the U.S. House of Representatives would authorize new financial incentives to owners for making improvements that cut utility bills or utilize renewable energy in federally assisted multifamily rental housing projects.

One measure (H.R. 4099), introduced by Rep. Mary Jo Kilroy (D-Ohio), reflects proposals developed by the Council for Energy Friendly Affordable Housing (CEFAH), an arm of the National Housing & Rehabilitation Association. The second bill (H.R. 4106) was introduced by Rep. Jim Himes (D-Conn.). Both bills were referred to the House Financial Services Committee.

Existing Rules an Issue

In a statement, Rep. Kilroy said, "Existing rules and regulations make it difficult for owners of federally assisted housing to maximize efforts to increase energy efficiency and decrease our nation's energy bill. The Energy Efficiency Modernization Act of 2009 would provide significant long-term cost savings for taxpayers and provide stimulus to the economy by generating capital projects and creating 'green collar' jobs."

A federal study estimated that

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The Challenges of Underwriting Green Improvements in Multifamily Properties

By David A. Smith, CAS Financial Advisory Services

WHEN PRESENTED WITH A PROPOSED green improvements program, those with fiscal decision responsibility – CFOs, property management heads, owners, and even regulators – find themselves reading the report much like restaurant diners presented with the antiquated "Ladies Menu" that lists dishes without prices. Everything's tempting, but what does anything cost?

To underwrite green improvements in affordable multifamily rental housing properties, one must bridge two sets of quantitative estimates: physics and economics. As greening is intimately connected with energy (both production and consumption), most metrics of green improvements emphasize the physical: changes in gas, oil, and water consumption, BTU's, R-factors, and air exchange rates. Yet financial decision-makers are not put in their roles to save the planet – *their* metrics must be economic: payback, net present value, internal rate of return. Without familiar and comparable yield standards, decision-makers will be reluctant to implement. While a CFO may take a below-market yield on some capital, she has to have some measure of economic return before making any recommendation.

For a Green Capital Needs Assessment to be underwritable, therefore, it must answer this two-part question:

> *Assuming the property funds this proposed improvement package, how much will it save, and what will be the return on incremental investment?*

Because green and energy conservation measures are interactive, normally additive-oriented assessments will not do. As a result, green underwriting today is floundering because the established analytical products – green assessments, energy audits, and similar studies – have fallen into one or more traps that renders their information useful for feeling good about one's eco-consciousness but unequal to answering the CFO's question.

The following principles are essential for selecting appropriate and cost-effective green improvements for a multifamily property:

1. **There's more to green than just energy savings.** This includes resident-satisfaction measures like better indoor air-quality (paints and carpet dyes that off-gas less) and using more organic materials with better durability.
2. **Energy production and energy consumption improvements are interactive, not additive.** Energy savings – the largest and most comprehensible set of

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the U.S. Department of Housing and Urban Development (HUD) spends about $6 billion per year on energy costs for six million HUD-assisted housing units – nearly 17% of all apartments nationally. Increasing the energy efficiency of federally assisted housing by 25 to 40 percent would save HUD an estimated $1-1.5 billion annually and substantial savings long-term.

H.R. 4099 would establish a new "green dividend" program at HUD, liberalize the rules regarding the use of project residual receipt and reserve for replacement funds, and establish new reporting requirements for HUD and project owners.

HUD could pay a green dividend to owners of covered federally assisted housing projects for improvements that reduce annual utility costs (energy, water) by half, and for related expenses (e.g., financing). This dividend would be an extra annual distribution paid to the owner from surplus cash flow. HUD would issue guidelines and requirements for the program, including standards for measuring utility cost savings.

The bill would also authorize a second new program that would allow owners of covered assisted housing projects, with HUD's approval, to use a portion of their project's residual receipts or reserve replacement funds to help fund "green retrofit" measures. These would be improvements that reduce utility consumption, increase energy efficiency, utilize renewable energy, or improve indoor air quality.

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improvements – divide into energy production (e.g., swap from electric heat to gas) and consumption (e.g., replacement of single-pane windows with polarized thermals). A tighter building envelope will reduce heating costs, as will installing a more efficient boiler – but the combined effect is less than the sum of doing each in isolation. Calculating combined impact requires comparing the Before and After states, which takes both energy expertise and suitable modeling software.

3. **Existing financial metrics are crude and inapplicable to most financing decisions.** Simple payback and savings-to-investment-ratio (SIR), commonly used on the engineering side, are unfamiliar to owners or lenders and awkward to interpret against cost of capital, target returns, or internal hurdle rates. Net Present Value (NPV) and its cousin Internal Rate of Return (IRR) are more easily understood, providing a clear picture of how much an improvement will save (or cost) over the life-cycle.
4. **Proper comparisons must encompass full life-cycle costs.** A product's life-cycle costs include more than just pur-

Underwriting,
continued on page 14

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Residual receipt funds would be provided as loans.

Covered assisted housing projects would include any multifamily rental project that receives rental assistance, mortgage insurance, subsidy, or other assistance from HUD and is subject to a limitation on distributions of project funds to the owner.

The bill would require HUD to issue regulations for both new programs within 180 days of legislative enactment.

H.R. 4099 would also direct HUD to require all owners of certain kinds of projects assisted, insured, or financed by the Department or by a state agency to report regularly on their project's consumption of electricity, water, gas, and other utilities. Covered developments would include project-based Section 8 projects and Section 202, 811, 221(d)(3), and 236 properties.

Himes Bill

H.R. 4106 would authorize HUD to make grants and loans to owners of eligible federally assisted rental housing projects to help finance eligible "green retrofit" improvements. These would be improvements that reflect one or more specific attributes, such as materially lower electric, heating fuel, or water consumption; healthier air quality; sustainability; and the like.

The definition of covered assisted housing projects would be broader than that in the Kilroy bill

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chase and installation – maintenance costs can be substantial. Further, new green improvements may have longer useful lives than conventional replacements, a benefit often overlooked. Life-cycle costing has to be flexible enough to embrace scenarios of varying interest rates, inflation rates, and discount rates.

5. **Green improvements can be thwarted by resident behavioral changes**. Put in a one-gallon toilet with inadequate bowl-cleansing power and the nine-year-old may flush it multiple times. Improvements should not lower the residents' quality of life or they will be subverted.
6. **The choice isn't green versus do-nothing, but green versus conventional maintenance.** You may blanch at the cost of high-conservation windows, yet your property's windows will need replacement in a few years anyways. In the meantime, your building is enclosed in heat sieves.
7. **Choices have a time domain: green versus conventional and now versus later**. After identifying desirable products, you must then decide the best tim-

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Level.

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ing, which varies depending on the existing system's remaining useful life. Some products waste energy relative to better technology and are worth replacing now, even if they have another 10 years left of expected life. Others should be left in place and upgraded only when they give out. A proper analysis tells you not only what to do today, but what to do when the time comes.

8. **Greening is an ongoing process, not just an isolated event**. For every existing property, no one ever retrofits every system all at once; instead, smart owners green over time through the normal replacement cycles, greening incrementally. Combining immediate improvements with a long-term green capital plan is essential for budgeting.

CFOs and corporate decision-makers will want a complete assessment that is predicated on an assumed green improvement package, which is then analyzed comprehensively regarding: up front installation; changes in energy production and consumption; changes in operating costs; revised life-cycles and replacement analysis; and effect on residual value.

The industry needs a comprehensive Green Capital Needs Assessment (Green CNA) that bridges between physics and economics with physically observable inputs and financially reliable outputs. Agreement on a standard, high-quality Green CNA tool will unleash the pent-up debt and equity capital eager to fund green improvements if they are presented as an underwritable proposition.

Greening is an ongoing process, not just an isolated event.

As it happens, we at CAS Financial Advisory Services have developed one.

David A. Smith is CEO of CAS Financial Advisory Services, a Boston-based firm that specializes in multifamily advisory, asset management, capital planning, and transaction services. He may be contacted at 617-502-5913, DSmith@casfas.com. ■

Bills,
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and also extend to projects assisted by federal low-income housing tax credit projects and financed by Rural Development Section 515 loans.

Owners would apply to HUD for a loan or grant and have to submit a written plan outlining the proposed retrofit improvements. Proposed improvements would need to have a payback period of at least 10 years and reduce the project's utility or operating costs by 20% or more.

In return for a grant, owners would have to agree to an extension of their project's affordability period.

(Bills: http://thomas.loc.gov) ■

Green,

continued from page 1

Professional and Executive Development. A partner in the law firm of Nixon Peabody, LLP, he works on green and affordable housing transactions, including those using housing and energy tax credits.

"We're at the point in the industry where affordable housing and sustainable development are intersecting big time," Lesk said. "If you're working in this area, either because you'll be required or incentivized to, you'll be doing green development and you'll be financing green development."

Lesk offered his "picks" on "what's new and what's next" in green and sustainable development. These include:

- **Larger Projects.** "Scale is hugely important." Large-scale, green projects are essential to make an effective dent in addressing the enormous environmental crisis, and for economic reasons.

- **State LIHTC Criteria.** "Every single state has now incorporated green criteria into their qualified allocation plans," Lesk noted. The incentives and points in each are different – some states offer points for green features and energy conservation, some for water conservation, some for site selection. "States have different degrees, but every one of them has it."

- **Beefed Up Local Requirements.** Increasingly, major and smaller cities throughout the U.S. "are starting to integrate green development requirements into [their] basic codes and basic ordinances." For example, Lesk said that in cities like Washington, D.C., New York, Portland, and Seattle, developers cannot pull a building permit unless they plan to build to a certain – sometimes high – level of sustainability. This trend is "transitioning in," said Lesk. It began with government buildings, is moving to major commercial buildings, "and it's going to be hitting our affordable housing projects probably in the next year or two."

- **Investor Preferences.** Increasingly, LIHTC equity investors want to invest in green projects. "This is an investor's market, and investors can get what they want… They're all out there with corporate statements that [say] they need to do sustainability like everyone else, and a green development is something that's going to be important to them."

- **More Green Roofs.** "Green roofs are going to be more and more prevalent." Lesk said green roofs and solar panels are the two green elements with the "highest impact," and that green roofs are transitioning from being merely "funky and funny" to mainstream. "Green roofs contribute to open space, soil conservation, and energy

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conservation." Lesk said Chicago has more green roofs than any other U.S. city because it promotes and requires them.

- **More Varied Designs Using Alternative Energy.** Solar panels don't necessarily have to be installed on rooftops; Lesk cited a Santa Monica development where the panels are on the side of the building. Similarly, wind power doesn't have to mean separate freestanding wind turbines; he noted horizontal wind turbines are integrated into the building at one Chicago affordable housing development.

- **Creative Open Space.** As developers are required or incentivized to build urban, transit-oriented developments, they'll have to be more creative to provide open spaces for residents. "The really creative projects are starting to incorporate rooftop as an amenity. It can be a community garden, a basic green roof, or a playing field."

- **Water Conservation.** Lesk predicted that water conservation in buildings will become as important as energy conservation is already. Prompting this in part will be the global warming issue as well as the fact that water is expensive in certain parts of the U.S. But another impetus is a growing recognition that a lot of energy is used to transport purified water to buildings. Examples of common water conservation techniques today include on-site capture and use of rainwater, use of low-flow toilets and water fixtures, and hardier landscaping.

- **Employment Opportunities.** The current focus on generating "green jobs" has the potential to create higher-paying, high-skill employment opportunities for residents of affordable housing properties, such as installing green roofs, building wind turbine blades, etc.

- **Increased Federal Programmatic Requirements.** In view of the Obama Administration's support and keen focus on greener buildings and sustainability, Lesk expects these standards to eventually become requirements for developers, owners, and communities in order to access federal dollars and mortgage insurance from the U.S. Department of Housing and Urban Development (HUD), such as HOME or CDBG dollars or FHA insurance. "Everything is going to have to be green that HUD touches."

- **Greater Emphasis on Rehab.** Lesk predicted that existing buildings – the "built environment" – will be part of any established carbon trading system. This, plus estimates that today's buildings will account for about 90% of the buildings standing in 2020, will foster an "intense focus" on rehabilitation of existing structures to make them more energy efficient and sustainable. ■

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DEVELOPER PROFILE

Laura Burns Focuses on GP Acquisitions to Thrive in Tough Times

AS CEO OF THE Eagle Point Companies, Laura Burns is one of four partners in an integrated network of four firms, all involved in affordable housing. The Portland, Me.-based company's arms include firms engaged in development and property management, investment, and consulting. Respectively, these are Eagle Point Partners, LLC; Eagle Point Management, LLC; Eagle Point Ventures, LLC; and The Signal Group.

Focus on GP Interest Acquisitions

Despite the fact that Eagle Point's development specialty has been preservation deals – acquiring and rehabilitating existing multifamily rental properties (generally HUD-assisted or regulated) using the low-income housing tax credit (LIHTC) and tax-exempt financing – the company is not developing any new projects. With the housing credit market under duress, Eagle Point is focusing instead on expanding its portfolio of properties and units under management by acquiring general partner interests in operating limited partnerships for existing LIHTC properties.

"Until we see a change in the tax credit equity market, we think [this] is a sounder business plan for us," says Burns. "We think that there are many owners that are desirous of a liquidity event, and that gives us the best opportunities to continue to invest monies, grow our portfolio, and grow our management company."

Since beginning this new business line in 2007, Eagle Point has purchased "GP" interests in nine properties with about 1,000 units, and soon expects to close on another six properties with 800 units. All are LIHTC projects.

Eagle Point's current management portfolio contains about 3,200 LIHTC units, comprised of the GP acquisition units and some 2,100 units in preservation projects that the company developed during 2001-2006.

"We have a pretty solid concentration in the Midwest – in Missouri, Michigan, and Indiana," says Burns. "And then we have another concentration on the East Coast – Washington, D.C., Alexandria, Virginia, Rochester, New York, and Southern New Jersey."

The GP interest acquisitions to date have all been properties still in their 10-year tax credit period. "To some degree, the general partner is more motivated [to sell] because their liquidity event is so much farther away," says Burns. This enables her company to pay a price that will support delivery of the projected returns to investors.

Eagle Point has funded its GP acquisitions thus far from an initial $10 million fund that has private individuals as investors, organized by Eagle Point Ventures in 2007. This fund is nearly depleted, and a significantly larger second fund is in the works and expected to be in place by early 2010.

Eagle Point identifies new GP acquisition opportunities from existing relationships, outreach, and through brokers.

Laura Burns

The company's first deal of this type, in December 2007, was an acquisition of the GP interest in Lafayette Apartments, a 340-unit apartment community in Alexandria, Va., outside Washington, D.C., which had been a 2003 tax credit acquisition/rehab deal. Burns said the property was "flailing" at the time, the result of inconsistent management, high vacancies, and operating deficits for the then-general partner. "The limited partner was quite pleased to see us enter the picture," says Burns. "And within three months, with just very intensive management, we turned the property from one that was losing money, to one that was at stabilization, met all the required debt coverage ratios, and is [now] a very positive cash-flowing asset for us."

Path to the Field

Burns ventured into affordable housing at the Boston Redevelopment Authority, where she worked from 1985 to 1992. "I spent a great deal of my time working on neighborhood development properties, and trying to facilitate tax credit deals for the city of Boston."

Burns, *continued on page 20*

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Georgian Court Apartments, Kansas City, Missouri

In 1992, Burns moved to Maine to work for national tax credit developer, Gleichman & Company, leaving there in 1995 to form The Signal Group, whose clients today include property owners and managers and government agencies.

Burns and her partners began the development company in 2001, followed by the management company and the investment company, the entity that raises capital and buys GP interests, in 2007.

Eagle Point fortuitously entered the GP acquisition business just as the LIHTC market began crumbling. "When the equity market changed so dramatically in 2008, we only had one deal that was in the [development] pipeline that was relying on finding an equity investor," she notes. Eagle Point's most recently completed preservation transactions utilized both housing and historic tax credit equity, including award-winning Georgian Court in Kansas City, Mo. This was one of three HUD-assisted properties that Eagle Point acquired in 2006 and completed in 2008.

Future Development

Although not actively pursuing any new development projects currently, Burns said Eagle Point is "committed" to LIHTC development and expects to resume this activity in the future once the market recovers. ■

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NH&RA News

CEFAH Energy Legislation Introduced

U.S. Rep. Mary Jo Kilroy (D-Ohio) has introduced a bill (H.R. 4099) that would create significant new financial incentives for owners of federally assisted rental housing projects for improvements to their properties that reduce energy and water costs and use renewable energy sources. The measure reflects proposals developed by the Council for Energy Friendly Affordable Housing (CEFAH), a council within the National Housing & Rehabilitation Association (NH&RA). Rep. Kilroy's bill, which has 10 co-sponsors, has been referred to the House Financial Services Committee. *(For details of bill, see article on p. 12.)*

NH&RA Article on LIHTC Set for Publication

An article describing the federal low-income housing tax credit and how it can be an attractive investment opportunity for local and community banks is scheduled for publication in the February 2010 issue of *ICBA Independent Banker*, a publication of the 5,000-member Independent Community Bankers of America. Written by Thom Amdur, Executive Vice President of the National Housing & Rehabilitation Association, the article is intended to educate banks about the housing credit and key issues for banks to consider when exploring LIHTC investment. The article is part of a broader effort by NH&RA to educate and attract new investors to the housing, new markets, and historic tax credits.

NCAHMA Members Participate on New York Conference Call

A number of members of the National Council of Affordable Housing Market Analysts (NCAHMA) participated in a conference call held December 3 by the New York State Division of Housing & Community Renewal (DHCR). DHCR officials shared their concerns regarding market studies submitted to the agency for proposed projects seeking low-income housing tax credits, and solicited questions and comments from market analysts regarding the agency's market study requirements for its 2010 housing credit funding round.

DHRC officials expressed concerns about certain trends in previous funding rounds, including:

- **Estimated rental vacancy rates.** DHCR encouraged analysts in describing the rental vacancy rates for a market area to extensively discuss vacancy rates for market-rate properties and not limit their analysis to affordable housing properties. In certain markets, the strength of the conventional rental sector can be a signal of likely support for tax credit projects.
- **Pipeline of projects.** When assessing comparable properties, proposed projects without secured adequate funding sources or firm construction schedules should not be counted as part of the existing pipeline of units.
- **Migration, waiting lists.** DHCR cautioned analysts not to rely too heavily on the migration of potential tenants to the market or on waiting lists at existing affordable properties as indicators of strength for a proposed project. If

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Ritz Carlton Hotel South Beach
Miami Beach, Fla.

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migration patterns and/or waiting lists are used, the report should state the reasons why.

- **Census tract data.** DHCR officials said they've seen census tract data manipulated to define market areas, and asked analysts to describe the methods they use.

Analysts on the call shared concerns and requested clarification on a wide range of topics, including:

- **Investor expectations.** Analysts said syndicators and investors increasingly are more conservative in their requirements for markets. For example, some require a 15% to 20% advantage in tax credit over market-rate rents in certain markets.
- **Underwriting of Section 8.** Some analysts said they've been asked to exclude project-based federal Section 8 subsidies in proposed rent calculations, to reduce risk to investors. DHCR indicated that while this may make sense in cases where a project can be viable without Section 8, market studies should clearly identify any variables that contribute to a proposed project's feasibility, including rent subsidies.
- **Comprehensive list.** Analysts said a single, comprehensive list of all existing affordable rental properties in New York State would help them in preparing market studies. They said current lists often omit older housing credit projects and tax-exempt bond projects.

NCAHMA subsequently provided its white paper, *Determining Market Area*, to DHCR, and will follow up with its member analysts and the agency to address the issues discussed on the call. Additional feedback and/or inquiries may be sent to Greg Sidorov, NCAHMA, gsidorov@dworbell.com.

NCAHMA Submits Comments on Arizona QAP

The National Council of Affordable Housing Market Analysts (NCAHMA) recently submitted comments to the Arizona Department of Housing (DoH) on its proposed qualified allocation plan for its 2010 low-income housing tax credit program. Arizona requires market studies for proposed credit projects to be prepared in accordance with either DoH's market study guidelines or the industry guidelines developed by NCAHMA. In its letter, NCAHMA urged DoH to strengthen its accountability standards when market studies are not prepared using the NCAHMA guidelines. Numerous state housing credit agencies have adopted NCAHMA's market study guidelines in whole or part in their housing credit programs and/or require or encourage the use of market analysts with the NCAHMA professional designation. To receive this designation, individual analysts must be employed by firms that are members of NCAHMA, pass a peer review, satisfy certain educational requirements, pledge to abide by NCAHMA's ethical standards, and prepare market studies that meet NCAHMA's market study guidelines. Details on NCAHMA, its market study guidelines, and designation requirements are at http://www.housingonline.com.

NCAHMA Conducting Survey of Analysts

The National Council of Affordable Housing Market Analysts is conducting a survey to identify the number of market analysts employed by NCAHMA member firms, and the specific states in which these analysts prepare market studies for affordable housing projects. The survey is intended to help grow the organization and create greater awareness of NCAHMA, its market study guidelines, and its professional standards. For more information, contact Thom Amdur, tamdur@housingonline.com.

GO Zone Historic Credit Incentive in Extenders Bill

A new tax "extenders" bill (H.R. 4213) approved by the U.S. House of Representatives would continue the higher tax credit rates for rehabilitation expenditures for historic and older buildings located in the Gulf Opportunity (GO) Zone for another year. NH&RA's Historic Preservation Development Council has pushed for this extension and for other proposed legislative enhancements to the historic tax credit. H.R. 4213 would also extend the federal new markets tax credit program, something advocated by NH&RA's New Markets Tax Credit Council. *(See p. 1 article for details)*

Choice Neighborhoods Draft Bill Unveiled

The U.S. Department of

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Housing and Urban Development (HUD) has released for feedback draft legislation for its proposed new Choice Neighborhoods Initiative program. This program is proposed in the Obama Administration's FY 2010 budget request for HUD.

NH&RA and its HOPE VI Council have been supportive and active regarding this proposed program, meeting with senior HUD officials and making early suggestions for specific details and themes in the enabling legislation.

Under Choice Neighborhoods, HUD would offer competitive grants to eligible applicants (municipalities, public housing agencies, developers) to help finance projects that revitalize public and assisted housing developments, and which include or support other elements to enhance the lives of residents of the properties and surrounding community.

NH&RA has prepared a summary of the draft bill. To view the draft bill, go to http://www.housingonline.com/Documents/choicedraft.pdf .

NH&RA Makes Plans for 2010 Annual Meeting

The National Housing & Rehabilitation Association is making plans for its 2010 Annual Meeting, to be held March 11-13 in Miami Beach, Fla. The Annual Meeting will be preceded on March 10 by an optional Symposium on New Markets Tax Credits.

Nearly all of NH&RA's Councils will meet during the Symposium and Annual Meeting. These include the Developers Council (developers only), New Markets Tax Credit Council, HOPE VI Council, Historic Preservation Development Council, and Council for Energy Friendly Affordable Housing.

The Developers Council meeting, where developers talk about their deals and current issues, will feature a presentation by Empire Builders on the state of the art in the use of prefabricated housing in affordable housing developments.

Some of the panel session topics planned for the Annual Meeting include LIHTC and Affordable Housing Trends and Opportunities, State Tax Credit Allocators Roundtable, New Opportunities for Old Buildings, Public Policy Update, Acquiring Troubled Properties, and TCAP and Section 1602 Technical Issues.

For details on the conference and to register, go to http://www.housingonline.com. ■

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HUD Seeks Comments on Mortgage Proposal

HUD IS SEEKING comments by 1/31/10 on a proposal to streamline the transaction approval process under its public housing mortgage program. Under the program, public housing agencies, with HUD's approval on a case-by-case basis, can mortgage their public housing real estate assets and use the borrowed funds to develop or renovate public housing. The proposed changes are intended to make it easier for PHAs to secure private-sector financing under the program.

(http://edocket.access.gpo.gov/2009/pdf/E9-29532.pdf) ■

New HUD Report Highlights Use of Land Banking for Foreclosed Properties

The U.S. Department of Housing and Urban Development has issued a new report, entitled, Revitalizing Foreclosed Properties With Land Banks. The report describes the concept and current trends in land banking, under which local governments create public entities called land banks that acquire, hold, and manage foreclosed properties, including to restore to productive use as affordable housing. The study also contains case studies detailing how existing land banking programs in the Atlanta area, Baltimore, and a Michigan county are revitalizing distressed local neighborhoods.

(Report: http://www.huduser.org/portal/publications/affhsg/landbanks.html) ■

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UPCOMING CONFERENCES

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KEY MEMBERSHIP BENEFITS INCLUDE:

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- 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
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The LIHTC Student Rules; Critical but a Source of Confusion

By A. J. Johnson

WHEN DEVELOPING or managing a low-income housing tax credit (LIHTC) property, it's critical to be familiar with the program's "student rules" as set out in the federal tax code and in Internal Revenue Service regulations and guidance. Otherwise, owners risk the loss or recapture of housing credits.

A review of the student rules is in order given their complexity and recent legislative and regulatory revisions.

Under Section 42 of the Internal Revenue Code, a housing unit qualifies for the housing tax credit if it is (1) rent-restricted and (2) occupied by a low-income household.

In general, units occupied entirely by full-time students are not treated as low-income units and are ineligible for housing credits. However, Code Section 42 provides five exceptions, which apply both to LIHTC properties and to tax-exempt bond-financed projects not claiming credits. Under these exceptions, a unit occupied by a household comprised entirely of full-time students that meets the LIHTC program's income limits may qualify as a low-income unit if:

1. Any member of the household is enrolled in a federal, state, or local job training program;
2. Any member of the household receives assistance under Title IV of the Social Security Act ("TANF" or "foster care");
3. The students are single parents and their children, and none are dependents of a third party (the children, though, may be claimed as dependents by the other, absent parent);
4. The students are married adults and eligible to file a joint tax return. *Note: These individuals need not actually file the joint return, and need not be married to each other; or,*
5. Any member of the household was previously under the care and placement of the foster care program under Title IV of the Social Security Act. *This exception was added by the Housing and Economic Recovery Act of 2008. The law does not specify any timeframe during which such assistance had to have been received, and the IRS has not issued any guidance to date. Until formal federal guidance is published, owners and managers should seek the advice of their state housing credit agency regarding its position on this exception.*

Definition of Full-Time Student

A full-time student is defined as an individual who during each of five months during the calendar year:

- Is a full-time student at an educational organization, as defined in Code Section 170(b)(1)(A)(ii). According to the IRS' *8823 Guide*, the term educational organization includes elementary schools, junior and senior high schools, colleges, universities, and technical, trade, and mechanical schools, but not on-the-job training courses.
- Is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational organization or of a state or state political subdivision. On-farm training are school-administered programs held on farms that educate students about farming and agriculture.

The calendar year used for the five-month rule is that of the taxpayer that claims the student as a dependent. In many cases, students living in LIHTC properties may not be claimed as dependents on another person's tax return. If the student does claim themselves as a dependent, the calendar year in which the student's taxable year begins should be used.

To be considered full-time, a student must attend school for at least part of any five calendar months during the year (the months need not be consecutive), and be classified as a full-time student by the school that they are attending.

Owners or managers should verify the student status of each new tenant household before move-in. This verification can be completed up to 120 days before move-in. In addition, the student status of each existing low-income household should be verified annually. In mixed-income projects, according to the *8823 Guide*, this can be combined with the annual tenant income recertification.

Vigilance in this area is crucial. For example, an individual that graduated from college in May but

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is not a full-time student when applying for an LIHTC unit in September would not be eligible for a credit unit because they were a full-time student during five months of the calendar year. The following January, however, they would qualify.

Student Income Issues

In 2009, the U.S. Department of Housing and Urban Development (HUD) released handbook changes that clarify what specific amounts must be treated as income for student households.

The two income issues relating to students that often confuse LIHTC owners and managers are the "$480 rule" and grants or scholarships.

$480 Rule

HUD's rules for calculating the income of a household, which LIHTC projects must follow, only count up to $480 in earned income per year for full-time students. A full-time student is an individual 18 or older who is not the head or co-head of the family or a spouse. A "co-head" is an adult member of the family who is treated the same as a head of household for purposes of determining income, eligibility, and rent.

HUD requires a unit's lease to be signed by the head of the household, spouse, any co-head, and all adult occupants. Therefore, requiring that a full-time student 18 or older sign the lease would appear to categorize that student as an adult, as defined by HUD. Since all earned income of adults must be counted, as opposed to dependents, it is recommended that full-time students 18 or over not sign as a party to the lease if the owner wishes to count only $480 of employment income.

When only counting $480 of earned income for full-time students aged 18 and above, managers should verify all income and the full-time status of the student.

Grants and Scholarships

HUD Handbook 4350.3, Change 3, requires counting grants or scholarships as income to the extent that they exceed tuition, but only for students who receive HUD Section 8 rental assistance. This rule has created confusion. Some argue that because household income under the LIHTC program must be calculated in a manner consistent to that used in the Section 8 program; that grants and scholarships should be treated as income for all tax credit residents who are students, regardless of whether or not they receive Section 8 assistance. However, to do so would violate Section 8 rules, which require that the excess income be counted only if Section 8 assistance is present. Therefore, grants or scholarships should be excluded from income for students in LIHTC units, unless they receive Section 8 assistance. The IRS *8823 Guide* confirms this view.

A. J. Johnson is president of A. J. Johnson Consulting Services, Inc., a Williamsburg, VA-based full service real estate consulting firm specializing in due diligence and asset management issues, with an emphasis on low-income housing tax credit properties. He may be reached at 757-259-9920, ajjohn@cox.net. ■

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IRS Letter Ruling Provides Relief to Taxpayer for Late Application Filing

IN A RECENTLY released private letter ruling, the Internal Revenue Service has held that a taxpayer's late filing of a Part I application with the National Park Service will be considered timely, even though the taxpayer didn't file the application before placing in service its historic rehabilitation tax credit development. In the ruling (200943001), the IRS noted that the taxpayer wasn't aware that the application had to be approved in advance, and erroneously believed that no Part I had to be filed because the building was already listed on the National Register of Historic Places.

(Ruling: http://www.irs.gov/app/picklist/list/writtenDeterminations.html)

Thematic Nomination Offers Alternative Way to Create Historic Tax Credit Projects

THERE ARE TWO COMMON approaches to making an old building eligible for the federal historic rehabilitation tax credit. One is to get it listed on the National Register of Historic Places as a certified historic structure. The other is to get it approved as a "contributing" building in a designated historic district.

A third, little-known method is a "thematic" approach, under which multiple buildings within a specified geographic area that share certain common characteristics can be made eligible for nomination for listing on the National Register.

This method provides developers an opportunity to seek National Register listings for multiple buildings at once rather than individually, and to create a pipeline of historic tax credit projects using properties they already own or that they acquire in the future.

In addition, "It provides an opportunity to list buildings that might not otherwise be listable," says Boston historic preservation consultant Albert Rex, Director of the Northeast Office of MacRostie Historic Advisors, LLC.

Special Documentation

To go this route, a sponsor must complete a special National Park Service form, called the Multiple Property Documentation Form (MPDF), and get it approved by the Park Service and state historic preservation office (SHPO).

Once it has been approved, all buildings that match the theme and traits described in the MPDF become eligible for nomination to the National Register. A Park Service Part I form must still be submitted for each building to get it listed on the Register.

In the document, the sponsor:

- Describes the particular type of older building that is being nominated and the common historic characteristics of such buildings (e.g. architectural style, construction type, time period of construction, original purpose);
- Delineates a specific geographic area that the nomination covers;
- Identifies specific buildings within this area that fit the defined theme; and,
- Provides historical information regarding the proposed theme and buildings and why they are significant.

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This document establishes future National Register registration requirements for buildings of this type located within the designated geographic area. This geographic area can vary, such as a particular neighborhood, entire city, or entire state.

Rex says a completed MPDF nomination form can be quite lengthy, say 75 to 80 pages. But once it has been approved, the Part I form subsequently submitted for each building is brief.

"This form creates an outline in which individual buildings can then be listed on the National Register," says Rex.

There is substantial flexibility regarding the proposed theme for buildings in an MPDF. One approved MPDF, for example, covers working- and middle-class apartment buildings throughout Kansas City, Mo. These buildings (circa 1885 to 1959) are typically multi-story masonry structures with mostly studio and/or one bedroom apartments originally targeted to lower- and middle-income renter families.

As with buildings listed by traditional process on the National Register, and approved contributing buildings within an historic district, rehabilitation plans for buildings listed through a thematic nomination must still be approved by the Park Service and SHPO before any rehabilitation expenditures can qualify for the federal historic tax credit.

Advantages of Approach

The advantages to developers and owners of the thematic nomination approach include:

- The ability to get buildings listed on the National Register that might have difficulty qualifying individually on their own merits or because they aren't located within a designated historic district.
- The ability to nominate a group of buildings at once, including those dispersed geographically.
- Speedier future nominations and approvals of historic rehabilitation projects involving buildings that match the approved theme.
- Greater predictability regarding the National Register listing requirements for a specific building type.
- An already-approved document that can be used by other developers to register their own properties that fit the theme, in order to rehabilitate them with the historic tax credit.
- Less likelihood of opposition from owners of other local historic buildings that fit the theme, since a thematic nomination doesn't force other owners to get their properties listed on the National Register.

One drawback is the significant time to research and prepare a thematic nomination submission, and discuss it with the SHPO and Park Service to win approval. This can stretch out to a year or so, says Rex. But he also pointed out that most states offer survey and planning grants that municipalities can access that might help pay for the historic building survey done for a MPDF nomination.

Rex advises developers thinking of considering the thematic approach to look for multiple buildings of similar type in a community that they might combine into a single, economically viable historic tax credit project. These might be apartment buildings in a particular district, or warehouse- or mill-type buildings in an industrial area, for example.

Rex said apartment buildings, which are common nationwide, can be good candidates. One approved large-scale MPDF, for instance, covers garden apartments in Virginia of similar architecture built during the 1920s and 1930s that were originally financed with federally insured mortgages. ■

Resources

National Register of Historic Places Multiple Property Documentation Form
http://www.nps.gov/history/Nr/publications/downloads/2009NRform-10-900b.doc

National Park Service Instructions for Completing the MPDF
http://www.nps.gov/history/nr/publications/bulletins/nrb16b/nrb16b_III.Completeing.htm

"Evaluating Common Resources for National Register of Historic Places Eligibility"
White Paper by Barbara Wyatt,
http://www.yellowdocuments.com/3240943-evaluating-common-resources-fo

Additional IRS Private Letter Rulings Reaffirm Use of Integrated Unit Test in Multiple-Building Projects

IN A PAIR OF RECENTLY released private letter rulings, the Internal Revenue Service has reaffirmed the ability of a taxpayer to use the "integrated unit test" to determine whether a proposed multiple-building new markets tax credit (NMTC) project meets a key program income threshold. The Service also held that the partnership sponsoring the project may be classified as a qualified business.

The identical rulings (200947004, 20094705), made public on 11/20/09, build on a previous groundbreaking private letter ruling that first permitted the use of the integrated unit test for a multiple-building NMTC project in Jackson, Miss. *(For details, see* Tax Credit Advisor, *October 2009, p. 29.)*

The latest rulings addressed a situation where the taxpayer and another company formed a partnership that would be the Qualified Active Low Income Community Business (QALICB) to invest in the NMTC project. The proposed project would consist of three buildings – two contiguous buildings and a nearby parking garage – redeveloped into a single integrated project. Two of the buildings would be renovated for both commercial use (retail, office) and residential use (apartments, hotel). The parking garage, across the street from one building, would be renovated and add interior pathways and a skywalk connecting to the other two buildings. Project tenants would be given priority to lease parking spaces, but there would also be public access. The project has been designed to provide for seamless movement between the three buildings by residents and commercial tenants.

The IRS rulings held that the three buildings may be treated as one for purposes of determining whether the NMTC program's commercial income test is satisfied. Under this test, a real estate project isn't eligible for the NMTC if more than 80% of its gross income comes from residential rental property (i.e. at least 20% must be derived from commercial uses). Normally, this 20% commercial income test must be met on a building-by-building basis. The new letter rulings allow this threshold to be met project-wide for the proposed development through application of the "integrated unit test." As a result, the three buildings can be treated as one for purposes of determining whether the project is to be classified as residential rental property or as nonresidential (i.e. commercial) real estate.

In the current rulings, key facts included that the buildings would be connected together and that the proposed project would share common plans of ownership, development, financing, and operation. Financing for the proposed project was to come from Gulf Opportunity Zone bonds, historic rehabilitation tax credits, new markets tax credits, and equity investment.

In the second part of the ruling, the IRS held that the partnership sponsoring the project is a qualified business as defined under the NMTC program, if the single integrated building (and its structural components) is classified as nonresidential real estate.

(Rulings: http://www.irs.gov/app/picklist/list/writtenDeterminations.html) ■

CAPITAL BRIEFS

Treasury Announces New Priority Guidance Plan

The U.S. Treasury Department has released its new priority guidance plan, identifying 315 specific rulemaking projects that the Internal Revenue Service plans to initiate or complete by 6/30/10. The list includes several sets of regulations for the low-income housing tax credit program (regarding qualified contracts, utility allowances for sub-metered buildings), and several for the new markets tax credit program (final rules on targeted populations and on recapture). Other items include guidance for the LIHTC TCAP and 1602 credit exchange programs, Build America Bonds, and Section 1603 energy grants.

(http://www.irs.gov/pub/irs-utl/2009_-_2010_priority_guidance_plan.pdf)

HUD Issues Several Housing Notices

The U.S. Department of Housing and Urban Development (HUD) has issued two significant notices recently. One (H 09-20) provides updated instructions to owners and management agents of assisted multifamily housing projects on how to use HUD's Enterprise Income Verification (EIV) system, which becomes mandatory on 1/31/10. The second notice (PIH 2009–50) describes how HUD will address and implement various statutory amendments to its Native American housing and community development programs. One 2008 amendment clarifies the treatment regarding federal Native American housing block grant dollars to fund developer fees for low-income housing tax credit projects.

(Notices: http://www.hud.gov/offices/adm/hudclips/whatsnew)

HUD Issues Proposed Rule for Housing Trust Fund

HUD is soliciting comments by 2/2/10 on a proposed rule that specifies the formula to be used to distribute federal dollars from the national Housing Trust Fund, which was established in 2008 but hasn't yet been capitalized. The purpose of the Fund is to provide grants to states to increase and preserve the supply of rental housing for extremely low- and very low-income families, including the homeless, and to increase homeownership among extremely low- and very low-income families.

(http://edocket.access.gpo.gov/2009/pdf/E9-28984.pdf) ■

State Briefs

Massachusetts Governor Signs Housing Bill

Massachusetts Gov. Patrick Deval recently signed a new law designed to preserve government-assisted "expiring use" rental properties in the state as affordable housing. He also announced the roll-out of a new $150 million loan fund to help finance preservation transactions. The legislation covers a wide range of properties with federal or state financing, insurance, or subsidies, including housing credits. It establishes a right of first refusal by the state for properties seeking to convert from non-affordable use, and sets out tenant notification requirements.

(http://www.mass.gov)

Ohio Opens Housing Research Center

The Ohio Housing Finance Agency has opened a new Office of Affordable Housing Research. The Office will seek to use research data to drive initiatives to cultivate policies ensuring affordable housing assistance to low- to moderate-income families statewide. The Office will also make use of partnerships with universities throughout Ohio.

(http://www.ohiohome.org) ■

How Can Market Studies Be Improved? Equity Providers Talk

WHAT CHANGES WOULD investors and syndicators like to see to improve market studies for proposed low-income housing tax credit (LIHTC) projects?

At the recent 2010 Annual Meeting in Chicago of the National Council of Affordable Housing Market Analysts (NCAHMA), several equity providers and a prominent representative of corporate investors gave answers.

Market studies are central to the LIHTC program. State housing credit agencies require a market study for every proposed project awarded tax credits, usually during the application process. Generally prepared by a qualified market analyst, a market study is a document that provides the analyst's reasoned judgment of whether or not the LIHTC project as proposed (e.g., targeted tenant type, unit sizes, amenities, rent levels) is likely to be successful. This assessment is based on an analysis of a wide variety of collected information and data about the project, site, the surrounding neighborhood, the market, local population, employment and income, rents and housing costs, and competing apartment properties.

Understanding of Comparables

"I always like to be able to walk away from the [market] study and have a clear understanding of what the three or four most comparable projects are to the project I am looking at, and why those projects are comparable," said Chicago attorney John Simon, a partner in the law firm of Sidley Austin LLP whose clients include numerous corporate investors in housing credits. "If your best comp is 20 miles, why does that make sense? If we're looking at single-family home projects and your best comp is garden style, why does that make sense?" Said Simon, "There are a lot of market studies that I read where it is not very clear what the best comparables are and why they are comparable."

Syndicator Mark McDaniel, CEO of Great Lakes Capital Fund, which manages state equity funds in four Midwest states and in Upstate New York, said, "Depth of analysis on the comparables is really important. That's not typically real strong."

In addition, he noted, "I really want to get a handle on the fieldwork that you did. I want to know that you were actually out there, talking to people, and in the field. And I want to hear the stories about what you found when you were out there, when you were there, and who you talked to."

Doug Lloyd, a vice president and underwriter with JPMorgan Capital, a major LIHTC investor, said he always asks for "more attention to shadow market analysis." This generally includes analysis of any non-conventional properties in the market area, such as rental single-family homes and foreclosed homes up for sale, which might compete with the proposed LIHTC project for qualified low-income renters.

Lloyd indicated that while a shadow market may not be a factor in all areas, JPMorgan will look for shadow market analysis when considering a possible investment in areas such as Florida and the Phoenix area, for instance. "We tend to do a lot of that ourselves. It would be great [if there were] something standard," he said.

Home Sales Market

Lloyd, McDaniel, and Vihar Sheth of USBancorp Community Development Corporation, another major LIHTC investor, also stressed the importance in market studies of a thorough and accurate analysis of the local home sales market, both regarding home prices and how easy or hard it is today to sell a home. One reason is to determine whether low-income renters can afford to purchase a home at current local home prices. Another is to determine, for instance, the reasonableness of projected capture rates for an LIHTC senior projects that assume attracting a certain level of local senior homeowners who sell their home and move to the property. Sheth suggested that some assumptions regarding the ease of home sales by seniors are overly optimistic given current tough conditions in many markets. McDaniel said he's seen recent market studies for senior deals with no analysis of the local home sales market.

Sheth also suggested that analysts carefully scrutinize and question base assumptions in project pro formas, such as a 2 or 3 percent annual rent increases, to assure that projected rents are realistic for the project and market.

NCAHMA, a council of the National Housing &

Market Studies,
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State Agency Roundup

Pennsylvania Approves 2010 QAP

The Pennsylvania Housing Finance Agency's board on 12/10/09 approved the qualified allocation plan for the agency's 2010 low-income housing tax credit program. The application deadline for a conditional credit reservation will be 2/26/10.

(http://www.phfa.org/forms/multifamily_news/2010_qap.pdf)

California Issues Proposed Changes to Regulations

The California Tax Credit Allocation Committee (TCAC) on 11/23/09 published changes proposed by agency staff to the Committee's regulations for its low-income housing tax credit program for 2010. The Committee expects to submit proposed changes to its board for approval in February 2010. The Committee scheduled three public hearings on the proposed changes in December. The agency also announced the schedule and location of 14 workshops on LIHTC compliance to be held throughout the state in February and March.

(http://www.treasurer.ca.gov/ctcac/programreg/20091123.asp)

Virginia Approves 2010 Allocation Plan

The Virginia Housing Development Authority's board on 12/4/09 approved the qualified allocation plan for the agency's 2010 low-income housing tax credit program and sent it to the governor for his signature. A single application round is planned with a deadline of 3/12/10 for submission of applications and market studies. Final rankings are expected to be announced in June 2010. The 2010 QAP, program timetable, and other documents are posted on VHDA's Web site.

(https://www.vhda.com/BusinessPartners/MFDevelopers/LIHTCProgram/Pages/default.aspx)

Kentucky Revising 2010 QAP to Ease Difficulties

The Kentucky Housing Corporation recently noted it is revising it 2010 qualified allocation plan for its low-income housing tax credit program to ease current difficulties in developing multifamily housing. These include difficulty in securing equity for new projects, insufficient gap financing, the uncertainty about the passage of proposed changes to the tax credit program, and other concerns. The changes include to: move out the application deadline to 2/19/10; extend the deadline for firm funding commitments for projects; an easing of equity commitment threshold requirements; and providing for completion of a site evaluation form instead of a required site review.

(http://www.kyhousing.org)

Oregon Postpones 2010 LIHTC Funding Round

Oregon Housing and Community Services has said it hold one funding round in its 2010 Consolidated Funding Cycle, which includes low-income housing tax credits and other resources, and has postponed the application cycle by 60 days. One-half of the available resources will be targeted to preservation of expiring federally subsidized affordable housing. OHCS will reserve all remaining 2010 housing credits and all 2011 housing credits in the funding round. The 2010 application will be available online on 2/19/10.

(http://www.ohcs.oregon.gov/OHCS/HD/HRS/pdfs/110509_CFC_Update_ELetter.pdf)

Wisconsin Online Application Now Available

The Wisconsin Housing and Economic Development Authority has announced that its online application form for its 2010 low-income housing tax credit program is now available. WHEDA requires applications to be submitted electronically. A single funding round will be held with applications accepted from 1/15/10 through 3/26/10).

(http://www.wheda.com/root/LIHTC/Dynamic.aspx?id=1990) ■

Market Studies,
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Rehabilitation Association, has developed guidelines for the preparation and contents of market studies for affordable rental housing projects, and professional standards for market analysts. These have been adopted in whole or part by many state housing credit agencies in their low-income housing tax credit programs. *(For details on NCAHMA guidelines and standards, go to http://www. housingonline.com.)* ■

Extenders,
continued from page 1

In addition, advocates worried about a tax provision in a separate House-passed health care bill that they suggested could deter future tax credit deals.

Extenders Bill

H.R. 4213, approved by the House on 12/9/09, is a $31 billion package that would extend various federal tax credits and tax incentives scheduled to expire on December 31.

It would extend by one year, through 2010, the low-income housing tax credit (LIHTC) Section 1602 exchange program, which was established in 2009. This and the companion Tax Credit Assistance Program are providing billions of federal dollars through state housing credit agencies (HCAs) to assist stalled LIHTC projects.

H.R. 4213 would continue the Section 1602 program under the current terms. State HCAs could elect to turn in unused or returned housing credits to the U.S. Treasury in exchange for cash, and award these funds to projects. The maximum amount that HCAs could exchange would be 40% of their 2010 per capita housing credit authority and 100% of any remaining credit authority in their 2010 credit ceiling. The exchange rate would be the same, and each state's 2010 credit ceiling would be reduced by the amount of exchanged credits. State HCAs would have to return to Treasury any exchange fund dollars not used by 1/1/12 to make grants to projects.

New Markets, Historic Provisions

The legislation would extend the federal new markets tax credit (NMTC) program by one year, through 2010, and authorize $5 billion for a 2010 funding round. It would also bump out the carryover period for unused NMTCs through 2015.

The bill would extend for one year the current higher tax credit rates for rehabilitation expenditures for historic and older (i.e. pre-1936) buildings located in the Gulf Opportunity (GO) Zone – parts of Alabama, Mississippi, and Louisiana. These higher rates – 26% rather than the normal 20% for historic structures, and 13% rather than 10% for pre-1936 buildings – would apply to rehab expenditures incurred before 1/1/11.

In addition, H.R. 4213 would extend special favorable tax treatment for charitable contributions of historic preservation easements, renew federal tax incentives for empowerment zones and renewal communities, and order a study of each individual tax incentive program that would be extended by the bill.

Favorable Reaction

Washington, D.C. attorney Jerry Breed, of Bryan Cave LLP, described the bill's one-year extension and $5 billion in new funds for the NMTC program as "very welcome." Also offering praise was John Leith-Tetrault, of the National Trust Community Investment Corporation, which syndicates new markets and historic tax credits.

Both, though, still hoped that Congress will approve other pending proposals to improve the program. The NMTC industry in particular has been lobbying for a multi-year extension as well as allowing the new markets credit to offset income tax liability under the federal alternative minimum tax (AMT).

Leith-Tetrault also commended the House bill's extension of the higher 26% tax credit rate for rehabilitation expenditures for historic buildings in the GO Zone. "We felt that was important because a lot of the effort to rebuild after Katrina has been delayed," he said. He noted historic rehab projects in the GO Zone have had a tougher time than projects elsewhere obtaining debt and getting started. "The recession's impact there has been disproportionate."

The Historic Tax Credit Coalition is also lobbying for passage of a handful of additional improvements to the federal historic and rehabilitation tax credits, including to encourage smaller projects and reward greater energy efficiency in old buildings. The Coalition is seeking to get several of its proposed changes in an expected jobs bill. There's also a parallel effort to try to get the historic "green" provisions included in a forthcoming Senate climate change bill.

Washington, D.C. Richard Goldstein, a partner in the law firm of Nixon Peabody LLP and counsel to the Affordable Housing Tax Credit Coalition, was "happy" about the provision to extend the LIHTC exchange program for a year.

Advocates contend that an extension is vital given the continued shortage of LIHTC equity, asserting that the extra federal dol-

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lars will make more projects possible, create additional jobs, and tide the industry over until the equity market returns to normal.

Goldstein and other LIHTC advocates hoped that Congress, in addition to an extension of the exchange program, will approve one or more other pending proposals designed to expand the exchange program, increase LIHTC equity investment, and broaden the investor base. These include proposals to: expand the exchange program to 4% housing credits; extend the carryback period for existing and LIHTC future investments to five years from the current one; and revise the passive loss tax rules so that taxpayers in certain business entities businesses entities, such as S corporations, can utilize the housing credit. These proposals have been developed and are being pushed by a coalition called Rental A.C.T.I.O.N and its member organizations. The National Council of State Housing Agencies has crafted a separate set of proposed changes relating to housing credits and tax-exempt housing bonds. *(For details on proposals, see* Tax Credit Advisor, *see* Tax Credit Advisor, *September 2009, p. 3, November 2009, p. 3.)*

At press time, it wasn't clear when the U.S. Senate would take up the House-passed extenders package, and whether the House and/or Senate will adopt additional proposed improvements to the housing, historic, and new markets credits.

The House is expected to craft and vote on a jobs bill, and Goldstein cited positive signs that more limited versions of the carryback and passive loss change proposals might be included. "We're at least in the discussion," he said. The Senate is also looking at a jobs bill and possibly considering inclusion of a five-year carryback proposal for all general business credits, not just the housing credit.

On 11/18/09, Rep. Bill Pascrell, Jr. (D-N.J.) introduced a bill (H.R. 4109) to extend the carryback period for the housing credit to five years.

Economic Substance Provision

Goldstein, Breed, and Leith-Tetrault expressed concern about a tax provision in a House-passed health care bill (H.R. 3962), suggesting that it would make if difficult for attorneys to issue new legal tax opinions for new housing, historic, and new markets tax credit transactions if enacted in its current form.

The proposed tax law change would incorporate into the federal tax code the "economic substance doctrine." This tax rule, which has been developed and interpreted differently over the years in a series of court decision, provides that a taxpayer's motivation for undertaking a transaction can't be to avoid federal taxes, bur rather must have economic substances; that is the expectation or hope of a profit.

H.R. 3962 would "codify" this doctrine and impose a financial penalty for transactions that lack economic substance.

A footnote (No. 260) in the written explanation of the proposed change by the congressional Joint Committee on Taxation

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Schumer Introduces LIHTC Measure

U.S. Sen. Chuck Schumer (D-N.Y.) has introduced a bill (H.R. 2827) that would allow, for enlisted personnel stationed at all U.S. military installations, the exclusion of their base allowance for housing (BAH) from annual income when determining whether they qualify as a low-income household eligible to occupy a low-income housing tax credit unit. A 2008 statutory change permits this exception only for personnel at nine specific installations.

An identical bill (H.R. 3641) is pending in the House of Representatives.

(Bills: http://thomas.loc.gov) ■

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(Report JCX-47-09) is intended to provide protection for transactions involving certain tax incentives such as housing credits, which reflect a social purpose spelled out by Congress in the original enabling legislation. Breed, though, noted that this intended protection isn't explicit enough to clearly protect housing, historic, new markets, and renewable energy investment tax credit transactions.

Breed has drafted proposed language on behalf of the Historic Tax Credit Coalition that would make the protection stronger and explicit, and organizations that advocate for other tax credits are weighing in for a possible multi-industry effort to get behind corrective language and lobby for it.

"We don't want to chill investment in these transactions," said Breed, referring to those involving historic, housing, new markets, and renewable energy tax credits. "So it would be helpful to have a more explicit discussion of the nature of the subsidy provided by these Code sections, and that [that] subsidy should be taken into account in the determination of whether there is economic substance present in the transactions."

The codification proposal is particularly worrisome because the provision would raise substantial revenues to help pay for health care reform legislation. ■

Monthly LIHTC, AFR Rates

Go to: http://www.housingonline.com.

HUD Issues Report on TCAP Activity By States

THE U.S. DEPARTMENT of Housing and Urban Development (HUD) has posted a report showing the activity as of 12/5/09 by 25 reporting state housing credit agencies under the Tax Credit Assistance Program. One spreadsheet shows the amount of TCAP funds received by each reporting state, the amounts committed and disbursed to individual and all projects, and the percentage of available funds committed and disbursed. A second spreadsheet lists individual projects to date, with funding amounts.

According to the report, the 25 state agencies so far have committed roughly $300 million in total TCAP funds and disbursed about $31 million.

(Report: http://portal.hud. gov/portal/page/portal/RECOVERY/ programs/TAX) ■

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