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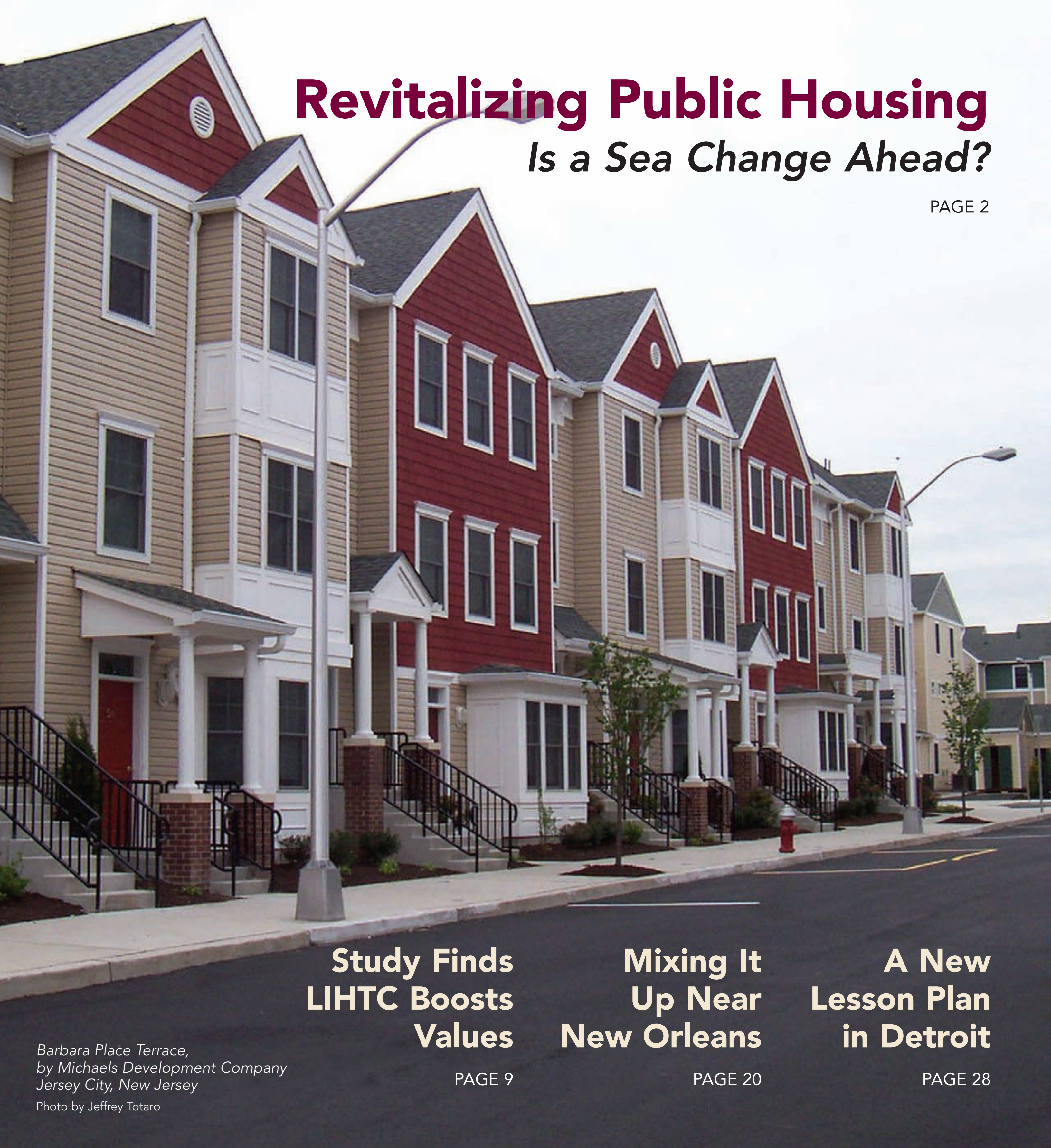

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Barbara Place Terrace,
by Michaels Development Company
Jersey City, New Jersey

Photo by Jeffrey Totaro

Congress Closes One Door, but White House Opens a Window

Thom Amdur

August is always slow for Congressional watchers, but it's especially so this election year. Congressional initiatives critical to our industry, including tax extenders legislation and small business legislation, remain in limbo. With few legislative days left before November, it is anybody's guess whether critical housing legislation will pass before the fall elections.

Fortunately, the Obama Administration is making renewed efforts to improve multifamily affordable rental housing policy. On July 7, the White House Domestic Policy Council convened key federal regulators – from the U.S. Department of Housing and Urban Development, U.S. Treasury, USDA's Rural Development, IRS, Council of Economic Advisors, and others – with key industry stakeholders (including NH&RA), for the first of what we hope will be an ongoing dialogue to improve and coordinate the myriad of federal multifamily affordable housing programs.

This working group's goal is to insure that federal rental housing policy gets the necessary attention to sustain the production and maintenance of the nation's affordable housing stock. We were invited to suggest ways to streamline processes across federal agencies that will not require new legislation.

For five hours, we had the undivided attention of key decision makers such as Derek Douglas (Special Assistant to the President for Urban Affairs), Carol Galante (HUD Deputy Assistant Secretary for Multifamily Housing), Tammye Trevino (USDA Rural Development Administrator for Housing and Community Facilities), and Mark Mazur (Deputy Assistant Secretary for Tax Analysis, U.S. Treasury).

The working group discussions focused mainly on underwriting, tenant rules, project servicing/financing issues, and project supervision/operations compliance. Much of the discussion focused on simplifying duplicative and/or unnecessary processes that add time and costs to transactions. For example, it was pointed out that current subsidy layering review requirements are ripe for revisiting. These requirements were important safeguards for the federal government in the pre-LIHTC days. However, as affordable housing programs have evolved, they have become increasingly cumbersome, especially when multiple agencies are involved. The federal government could establish cross-agency uniform review guidelines, designate a lead agency for reviews, or even remove the requirements entirely.

Another improvement would be for HUD, RD, and the IRS to simplify procedures and requirements for multifamily property capital needs assessments, physical needs assessments, appraisals, environmental reviews, Davis-Bacon wage determinations, and market studies. In each of these areas, existing timing, requirements, and methodologies can vary across agencies and even within programs of the same agency, causing confusion and duplicative action by program users. A single national standard for market studies, for instance, like that proposed by the National Council of Affordable Housing Market Analysts, could greatly accelerate the processing of funding applications and reduce pre-development costs, benefiting both developers and regulators.

Another topic of discussion – and one dear to NH&RA's Council for Energy Friendly Affordable Housing (CEFAH) – focused on allowing residual receipt and reserve account funds to be used to pay for energy retrofits. We reiterated the need for greater flexibility in the use of these funds, and encouraged the agencies to allow federal grants such as weatherization assistance dollars to be provided to projects as loans.

Additional areas of discussion were dispositions criteria, workouts, tenant selection policies, income verification, lease requirements, subordination requirements, utility allowances, site inspections, and REAC scores.

While we will continue to focus on NH&RA's legislative priorities, we welcome the opportunity to work more closely with the Administration on regulatory improvements as well, and encourage you to join in. If there is an administrative issue that you'd like to see raised, contact me, at 202-939-1753, tamdur@housingonline.com.

Thom Amdur is Associate Publisher of the Tax Credit Advisor *and Executive Director, National Housing & Rehabilitation Association*

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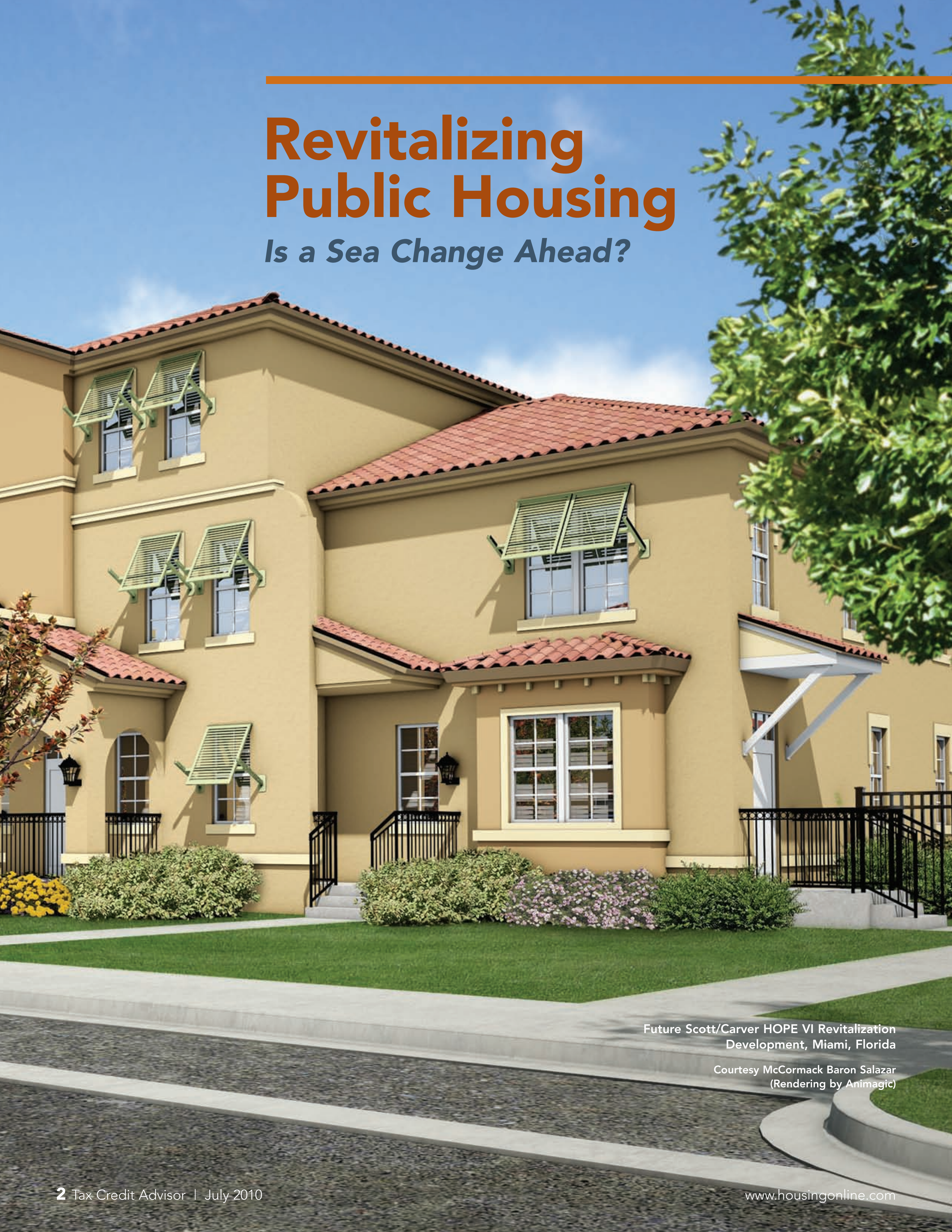
Revitalizing Public Housing

Is a Sea Change Ahead?



Future Scott/Carver HOPE VI Revitalization Development, Miami, Florida

Courtesy McCormack Baron Salazar (Rendering by Animagic)

As she oversees the final stage of redevelopment of Cochran Gardens, St. Louis' first major public housing complex, St. Louis Housing Authority Executive Director Cheryl Lovell is simultaneously supervising other development projects that will create new public housing and affordable rental units. She's also holding her breath, awaiting possible radical changes from Washington in how public housing authorities (PHAs) do business and revitalize their housing stock.

The looming dynamos are two new initiatives proposed by the Obama Administration for the U.S. Department of Housing and Urban Development (HUD): Choice Neighborhoods and Transforming Rental Assistance. Both require passage of legislation by Congress to become a reality.

Cornerstones of Affordable Housing

PHAs, created in the 1930s and today numbering more than 3,100, own and operate public housing – low-rent apartments serving the poor and extremely low-income – and administer HUD's Section 8 voucher program locally. About 3,500 public housing developments serve 2.3 million residents.

In recent decades, PHAs have expanded beyond their core functions of public housing and Section 8. Many have redeveloped distressed existing public housing projects into mixed-income residential communities using federal HOPE VI grants and other resources, such as low-income housing tax credits. A number have also developed similar "mixed-finance" projects without HOPE VI grants, combining public housing dollars (e.g. capital grants) with other public and private funds including housing credit equity.

The new mixed-income developments have typically had a combination of public housing, LIHTC, and market-rate rental units; some have also had for-sale housing. In these ventures, some PHAs have acted as their own developer, while others have partnered with or retained private developers.

The St. Louis Housing Authority has generally hired private developers for its revitalization projects. For many of its HOPE VI and non-HOPE VI projects, that developer has been St. Louis-based McCormack Baron Salazar. The company has developed numerous mixed-finance residential communities in major cities nationwide, as well as some mixed-use projects using the new markets tax credit. In fact, it completed one NMTC project that provided new office quarters for SLHA.

McCormack Baron is currently constructing a senior rental housing building for SLHA, called Senior Living at Cambridge Heights, as the final stage of redevelopment of Cochran Gardens. Set for completion in November, it will contain 111 affordable apartments, including 80 public housing units. Cambridge Heights, the new HOPE VI community, already has two completed phases of 223 family rental housing units, including 90 public housing units. The original Cochran Gardens, built in 1953, once had 12 high-rise buildings – 11 family, 1 elderly – with 531 public housing units.

In the past 12 years, SLHA, using three HOPE VI grants and other resources, has revitalized all but three of its public housing properties, through demolition of obsolete and substandard buildings, rehabilitation, and new construction. During this period its public housing portfolio has decreased from about 5,800 units to 2,941 units, but it has expanded its stock of other affordable, non-public housing rental units.

Cheryl Lovell

With its public housing revitalization nearly complete, SLHA is now focusing on new development projects to expand its overall portfolio. One example is Arlington Grove, expected to start construction soon. Developed by McCormack Baron, the project will contain 112 new affordable rental apartments (including 70 public housing), created from the rehabilitation of an historic former school building plus new construction. Like many projects by PHAs these days, the project has multiple funding sources. Says Lovell, "It has low-income housing tax credits, public housing competitive stimulus money, regular public housing capital funds, historic tax credits, [federal] HOME money, solar tax credits, and [Section 1602] exchange funds."

ARRA Jumpstarts Projects

The American Recovery and Reinvestment Act of 2009 (ARRA) blessed PHAs with massive additional dollars that have enabled them to accelerate and expand their public housing redevelopment efforts, and "green" existing properties through retrofits and energy efficiency improvements. The Act provided an extra $3 billion in public housing capital funds for all PHAs, plus another $1 billion for competitive grants. Some of the

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latter pot was earmarked for public housing energy retrofit projects.

ARRA also established the Tax Credit Assistance Program and Section 1602 exchange programs, from which a number of PHAs have received dollars to plug funding gaps in LIHTC projects caused by declining housing credit pricing.

Saul Ramirez, Jr., CEO of the National Association of Housing and Redevelopment Officials, says the LIHTC has been key in assisting housing authorities in revitalizing public housing developments. "Public housing has been a strong participant in the tax credit program for several years now, and has been quite successful throughout the country in repositioning public housing assets to better serve the communities," he says. "And, much like the private sector, they have suffered as a result of the shrinking price for tax credits."

PHAs have also been challenged in trying to revitalize public housing properties by the declining annual funding for HOPE VI grants; lower annual funding for public housing capital grants; and greater difficulty in securing allocations of 9% housing credits.

Massive Remaining Backlog

While much progress has been made in revitalizing and modernizing public housing properties, much need remains. The current public housing capital needs backlog is between $20 billion and $30 billion, according to Ramirez, who describes public housing as a valuable public asset providing safe, decent, and affordable housing "for some of the most vulnerable populations in our country – the elderly, the low-income, and the disabled."

Sandra B. Henriquez, Assistant Secretary of Public and Indian Housing at HUD, says the biggest challenge PHAs face today in trying to revitalize their public housing stock is "money – financial resources," although she noted that "the tax credit markets are starting to loosen up." Notes Henriquez, "In any real estate development deal, whether it's public housing or not, [the challenge] is identification of resources and being able to leverage different pots of money to make the deal come together."

Sandra Henriquez

Changes Occurring

Michaels Development Company, of Marlton, N.J., a major developer of HOPE VI, mixed-finance, and LIHTC projects, is seeing some changes in the funding sources and the profile of mixed-finance deals.

President Robert Greer says the primary dollars that PHAs are bringing to the table now for new mixed-finance projects, instead of the big HOPE VI grants of the past, are federal Replacement Housing Factor funds. These public housing dollars are typically used to help cover construction costs or to pay debt service on a loan taken out by the housing authority.

"The days of doing these deals with two or three levels of financing are gone," he says. "We have to go to multi-layering."

As the PHA's partner, Michaels Development on new mixed-finance projects supplements the dollars brought by the housing authority, by seeking other sources of funding needed to make the deal work. These usually include LIHTC equity, supplemented by other soft funding sources such as federal Community Development Block Grants, HOME funds, state trust fund dollars, or Federal Home Loan Bank monies.

One encouraging sign, Greer noted, is that unlike a year ago, tax credit syndicators – bolstered by new capital from insurance company investors – are again approaching his company about these projects.

As for the profile of projects, that is changing a bit, too. The standard composition of HOPE VI projects used to be one-third public housing units, one-third tax credit units, and one-third market-rate rental and/or homeownership units. "Now we see less homeownership and a little more public housing," Greer says.

Michaels Development, for example, has incorporated a variety of housing units and architectural styles in four separate developments it has completed as part of the massive Lafayette Gardens HOPE VI revitalization project in Jersey City, N.J.: Pacific Court Townhouses, comprised of "city townhouses" containing 72 mixed-income one- to three-bedroom apartments for families, including 41 public housing units; Lafayette Senior Living Center, a four-story, 83-apartment development for elderly and frail elderly residents; Ocean Pointe, a 58-unit mixed-income seniors property; and Barbara Place Terrace, a low-rise 67-unit mixed-income development for families.

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Miami Development

In Florida, developer McCormack Baron Salazar is beginning a new phase in the redevelopment of the former Scott Homes/Carver Homes public housing complex in a Miami neighborhood, as part of a HOPE VI revitalization project by the county housing authority.

"We're developing a 354-unit mixed-income, mixed-finance development," said McCormack Baron Vice President Michael Duffy. The development, expected to start construction in September, will include 177 public housing units, 107 tax credit units restricted to households at or below 60% of area median income, and 70 market-rate apartments. Funding sources include nearly $17 million in HOPE VI funds, equity from the sale of 4% housing credits, proceeds from two separate tax-exempt bond issues, Replacement Housing Factor funds, public housing stimulus dollars, federal Neighborhood Stabilization Program monies, a small bank loan, and funds from the county. LIHTC equity of about $15 million will cover less than 25% of the total development cost.

"We got substantial support from the county," said McCormack Baron Salazar President Kevin McCormack. The county, providing nearly $14 million in soft debt, will receive a 60% participation in excess cash flows from the project.

The development, to be built to the Enterprise Green Communities criteria, will have

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Stratford Capital Group is pleased to announce the closing of approximately $80 million in Low-Income Housing Tax Credit ("LIHTC") equity over the past 12 months. Listed below are a sample of the 4% and 9% LIHTC transactions we completed during the year.

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$11,258,000
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WAVELAND, MISSISSIPPI
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Family/160 Apartment Units

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

$9,641,000
THE MUSES
NEW ORLEANS, LOUISIANA
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Family/211 Apartment Units

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

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

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Public Housing, continued from page 5

many green and sustainable features.

McCormack Baron is still finding substantial interest from equity providers in its new mixed-finance deals, although the level of interest and tax credit pricing varies by market.

"Today, the amount of the subsidy you need as a result of the drop in the equity pricing has increased substantially," McCormack said. "Fortunately, the various stimulus actions of Congress have supplied a lot of that gap…What happens in 2011, that's a different story."

The Big Unknown

The future course of public housing revitalization could be radically changed if Congress passes legislation to authorize the Choice Neighborhoods and Transforming Rental Assistance (TRA) programs.

Choice Neighborhoods, intended to build on HOPE VI, would offer competitive grants for development of affordable housing projects in conjunction with other efforts to improve the lives of the residents and the neighborhood, such as to upgrade local schools. As the program is currently designed, PHAs would be just one of the eligible applicants for Choice Neighborhood grants, unlike HOPE VI.

Congress appropriated $60 million in FY 2010 for a Choice Neighborhoods demonstration program. The Obama Administration has requested another $250 million for FY 2011. HUD recently HUD issued a "pre-notice" with details and a vision for the program to prepare potential applicants for a funding round.

TRA, in HUD's FY 2011 budget request, is a proposed initiative that would offer PHAs the option to convert individual public housing projects to project-based rental assistance, and consolidate HUD's 13 separate existing rental assistance programs. Owners of certain HUD-assisted housing properties would also have the conversion option. The Administration requests $350 million for FY 2011 to preserve about 300,000 units.

Brookline, Mass. consultant Thomas Nutt-Powell, president of Capital Needs Unlimited, a Housing-Solutions member firm, anticipates that implementation of TRA would make public housing properties that can convert to project-based rent subsidies more valuable in the eyes of private capital sources, and thereby increase access by PHAs to private funding sources – particularly debt – to help redevelop these projects.

Henriquez also felt that TRA, by providing a steady assured funding stream, would make public housing projects more attractive to private-sector capital sources. "We think that the equity markets understand that financing [for projects with project-based rental assistance], have written product and deals according to that funding stream, and would do likewise on the public housing side if converted to that," she noted.

Henriquez indicated that PHAs must ultimately shift to a property-based model, under which each public housing development must be self-sustaining financially – by restructuring if necessary – as well as provide a good place for people to live and raise families.

"We want the public housing portfolio to be preserved and to expand," she says, "because the need is there for people who need deep affordability. We want the best public housing possible. And it may take a long time for us to get there. But by good business practices and planning and resource identification and leveraging, or whatever tools we need to introduce to the public housing authorities, that's what we see our goal and our mission to be." TCA

Hawkins Delafield & Wood LLP seeks one or more attorneys for openings in the firm's Washington, D.C. office. The firm is seeking attorneys with experience in public and subsidized housing, low-income housing tax credits and affordable housing finance. Hawkins offers an excellent opportunity to work with public housing authorities and other affordable housing-related entities in a leading national public finance law firm with established public and affordable housing expertise.

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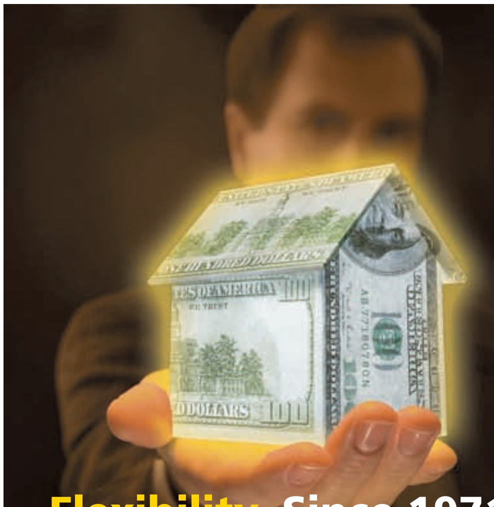
In Brief

Multifamily real estate veterans Rob Vogt and Chip Santer have established a new company, **Vogt Santer Insights**, a real estate market research firm designed to set a new standard in market feasibility, data analysis, and research through the use of new analytical tools and services. Among other things, the Columbus, Ohio-based firm will provide market research, real estate market feasibility studies, rent comparability studies, repositioning plans, and mapping and demographic services. Vogt was founding partner of VWB Research, a real estate market research firm. Santer previously operated an urban infill real estate development company, Santer Communities.

Modern Realty, Inc., the parent company of Pacific Housing Advisors and Allied Pacific Development, has changed its name to **Vitus Group**. The Seattle, Wash.-based company, which has offices in Seattle, New York, San Francisco, Hawaii, and San Diego, both develops affordable housing projects itself nationwide and serves as a lead consultant to other affordable housing developer clients. The company said the name "Pacific" no longer reflected the true breadth of communities that the firm impacts. Vitus Group will serve as the parent company to Vitus Advisors (formerly Pacific Housing Advisors) and Vitus Development (formerly Allied Pacific Development). Vitus has developed more than 60 properties containing over 15,000 units in 13 states, and served as advisor for nearly 150 projects in 16 states. TCA



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An Upward Lift

New York City LIHTC Developments Boost Values, Residents

Low-income housing tax credit developments in New York City have had a positive economic impact on the neighborhoods in which they are located, including raising property values, according to a new study released on June 23.

Commissioned by the Local Initiatives Support Corporation (LISC) and Enterprise Community Partners (Enterprise), the study concludes that affordable housing development is a proven economic stimulus that can expand neighborhood spending power, raise surrounding property values, and help low-income families stabilize their economic outlook.

The study reflects an analysis of data by the Furman Center for Real Estate and Urban Policy at New York University and independent consultants. Researchers analyzed home prices for properties near all 660 LIHTC properties in New York City, assessing the impacts from each development in a several block radius. The study also incorporated interviews with developers and residents of two sample projects in the Bronx.

The study, which assessed the impact of new and rehabilitation low-income housing projects on their residents and on the surrounding neighborhoods, drew three main conclusions:

- **Higher property values.** LIHTC project investments increase adjacent property values and help generate additional property tax revenue. They increased the value of surrounding properties by 6 percentage points immediately, and fostered subsequent consistent additional gains.

- **Family financial stability.** Families in affordable housing more than double their discretionary income, allowing them to pay for health care, pay down debt, or save. Researchers found a 12% immediate annual return to residents of one Bronx LIHTC development, from increased disposable income.

- **Increased local purchasing power.** Affordable housing boosts business for nearby merchants. By paying rent within their means, residents of a cluster of Bronx rental developments expanded estimated local purchasing power by more than one-third.

The positive impacts were felt in low-, moderate- and high-income communities alike, with clusters of small projects having the most significant effect, the study found.

"The research shows no evidence of the significant reductions in property values that communities sometimes fear when new subsidized housing is proposed," said Ingrid Gould Ellen of the Furman Center. "To the contrary, the research finds these developments can lead to increases in nearby property values over time."

(Study: http://www.enterprisecommunity.com) TCA

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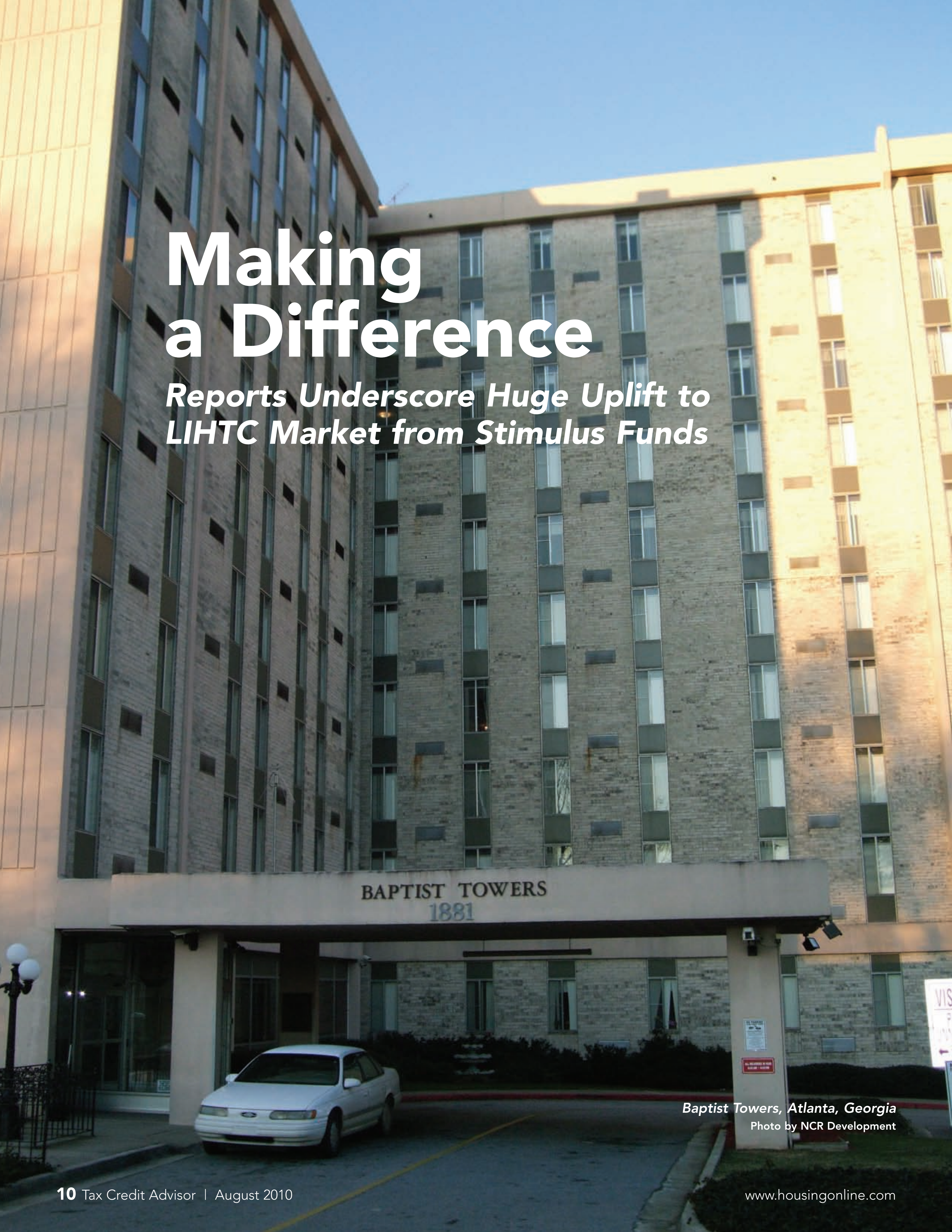
Making a Difference

Reports Underscore Huge Uplift to LIHTC Market from Stimulus Funds



Baptist Towers, Atlanta, Georgia
Photo by NCR Development

On June 25, at a Chicago conference, federal officials cited statistics showing the huge positive impact from stimulus funds in shoring up the low-income housing tax credit (LIHTC) market as they reported on activity to date under the Tax Credit Assistance Program (TCAP) and Section 1602 exchange program.

The two programs were established in February 2009 by the American Recovery and Reinvestment Act (ARRA), to provide federal funds to facilitate the construction or rehabilitation of proposed new LIHTC projects stalled by the shortage of tax credit equity. The act provided $2.25 billion in TCAP dollars through the U.S. Department of Housing and Urban Development (HUD) to 52 state housing credit agencies (HCAs), to make competitive funding award to projects that received housing credit allocations by 9/30/09. The 1602 program offered 56 HCAs the option to exchange a portion of certain unused housing credits to the U.S. Treasury for cash grants to make "sub-awards" of funds to stalled projects.

HUD and Treasury issued initial program guidance in May 2009; state HCAs subsequently designed and implemented their TCAP and 1602 programs and began committing funds to specific projects.

At the tax credit conference, sponsored by the National Council of State Housing Agencies, HUD and Treasury officials reported that as of 6/21/10, 794 projects containing 54,090 housing units had received commitments of TCAP funds, and 703 sub-awards of exchange dollars had been made for projects with 24,500 units as of 3/31/10.

By comparison, 91,911 units received allocations of 2008 housing tax credits, according to NCSHA statistics.

Stimulus, continued on page 12

Filling in the Lines

TCAP, Exchange Dollars Provide Helping Hand to Ohio-Based Developer

National Church Residences (NCR), based in Columbus, Ohio, is the largest nonprofit owner of senior affordable housing in the country. A heavy user of low-income housing tax credits, it develops and owns affordable rental housing properties in 23 states and Puerto Rico.

Like other developers, NCR has been challenged by the turndown in the LIHTC market – namely lower credit pricing and pickier equity providers.

At the National Council of State Housing Agencies' tax credit conference in Chicago, Jim Baugh, NCR Vice President of Acquisitions and Development, described some of his organization's projects made viable by awards of TCAP and/or 1602 exchange funds. Examples include:

- **Baptist Towers, Atlanta, Ga.** 300 units, seniors, acquisition/rehab, 9% LIHTC award. TCAP funds, of about $1.85 million, cover about 11% of the nearly $17 million total development cost of this project, which closed in December 2009 and is set for completion in October. Other funding sources: federal and state housing tax credit equity, federal HOME funds, HUD Section 221(d)(4) mortgage.
- **Lincoln Gardens, Columbus, Ohio.** 108 units, seniors, acquisition/rehab, 9% LIHTC award. Total development cost: $11,842,300; TCAP, $1,465,000 (12% of TDC); exchange funds, $3,517,258 (30%).
- **The Commons at Livingston, Columbus, Ohio.** 50 units, permanent supportive housing for low-income households and formerly homeless veterans, new construction. 9% LIHTC award. Total development cost: $8,365,335; TCAP, $500,000 (6%); exchange funds, $1,724,441 (21%).
- **Renaissance Senior Apartments, Toledo, Ohio.** 54 units, seniors, acquisition/rehab. 9% LIHTC award. Total development cost: $10,479,287; TCAP, $350,000 (3%); exchange funds, $2,303,216 (22%).
- **Kiwanis Village, Findlay, Ohio.** 45 units, seniors, acquisition/rehab. 9% LIHTC award. Total development cost: $6,182,039; TCAP, $3,245,000 (52%); exchange funds, $1,236,906 (20%).

"There were gaps in these projects," Baugh noted, adding that without the TCAP and exchange funds they "would not have been able to go forward." TCA

Stimulus, continued from page 11

"There's a phenomenal amount of [TCAP] money being committed," said HUD official Marcia Sigal. As of 6/21/10, she noted:

- State HCAs had committed $2.1 billion in TCAP funds (93% of total).
- 51 of 52 state HCAs met the requirement to commit at least 75% of their funds by 2/16/10. HCAs must disburse 75% by 2/16/11, and 100% by 2/16/12.
- $563 million in TCAP funds had been expended, including more than $40 million during the week of June 14th. Arizona (70%) and Wisconsin (58%) led all states in expending the largest share of their allocated funds.
- Average TCAP award per project: $2.6 million
- Average project size: 69 units
- 60%-40% split between new construction and rehab projects

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According to a posted HUD spreadsheet, as of July 4, 106 projects nationwide had expended 100% of their TCAP award amount, though only 140 units (two projects) had been completed.

Under both the TCAP and exchange programs, funds can't be expended or disbursed to projects earlier than three days before they are needed to pay for actual costs.

Sigal said that one state has indicated it will return TCAP funds to HUD because it doesn't have enough projects to assist. "We will be reallocating some TCAP funds that have been unused," she stated. HUD will post a Web notice, probably this summer, detailing the criteria that states must meet to be eligible to apply for extra funds.

1602 Exchange Program

Treasury official Jean Whaley reported that only two eligible jurisdictions – New York State and the Northern Marianas Islands – are not participating in the Section 1602 program.

She said that Treasury has awarded a total $5.47 billion in exchange funds to state HCAs to date, of which nearly $1.1 billion has been disbursed to projects. Current exchange fund disbursement rates by states range from 0% to 79%.

State HCAs can submit additional exchange fund requests to Treasury through year-end 2010.

As of 3/31/10, Whaley noted, 703 sub-awards had been made for projects with 24,500 housing units generating 28,000 jobs. By the end of the program, the estimated totals are 1,200 projects, 73,000 units, and 84,000 jobs. TCA

Affordable Green Housing Grant Program Announced

The U.S. Green Building Council and the Bank of America Charitable Foundation have announced a new Affordable Green Neighborhoods Grant Program. The competition is open to developers and related public agencies that pursue LEED for Neighborhood Development certification for projects that demonstrate a commitment toward strengthening existing communities by providing affordable green housing for persons of a range of incomes. Grants and educational resources will be awarded. The application deadline is September 9.

(Details: http://www.usgbc.org/DisplayPage.aspx?CMSPageID=2184) TCA

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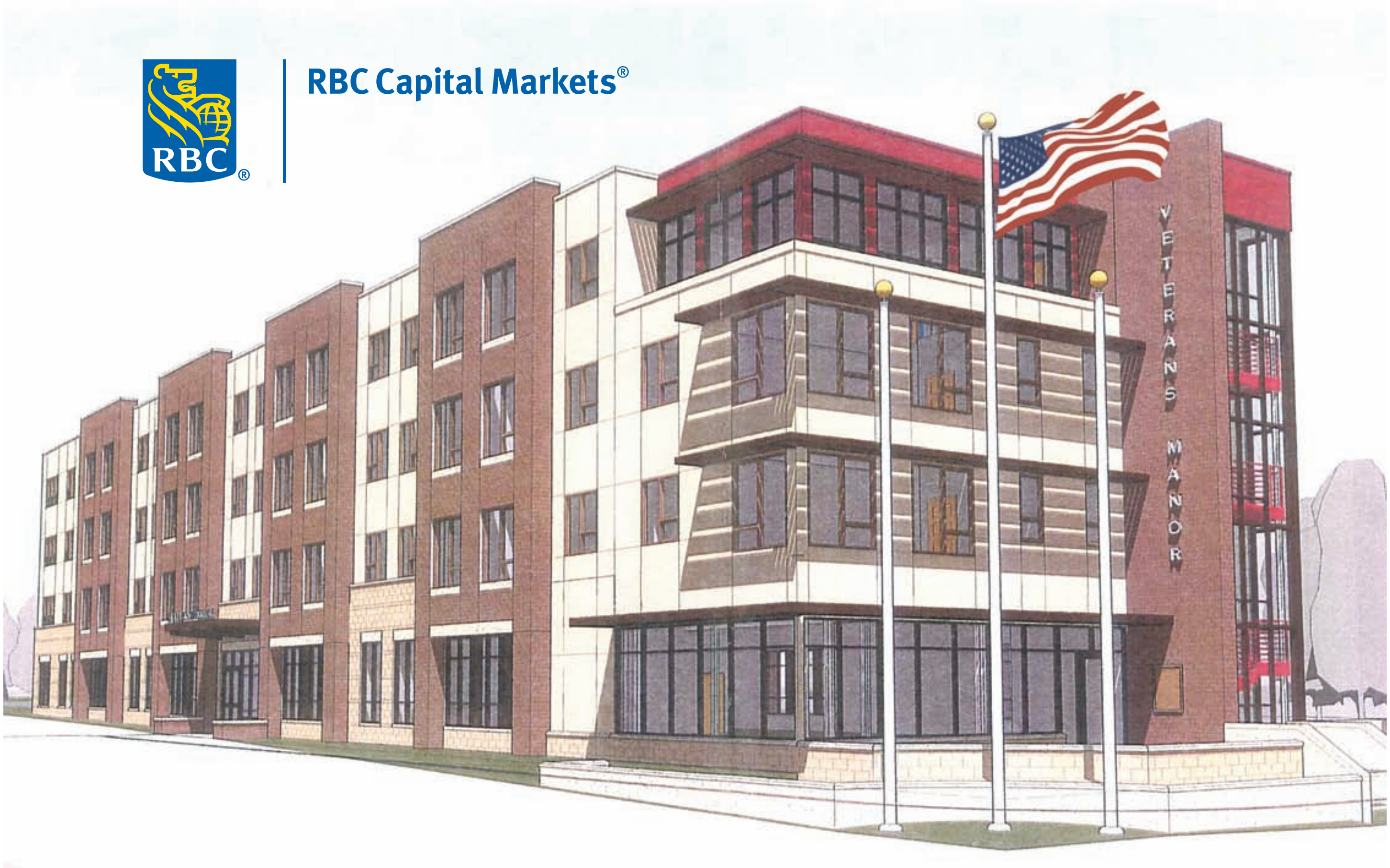

Opening Doors ... Closing Deals

RBC Capital Markets' Tax Credit Equity Group is proud to be the financial partner investing $6,805,447 in LIHTC equity in Veterans Manor in Milwaukee, Wisconsin.

Veterans Manor provides 52 affordable homes targeted to military veterans. In addition to extensive unit amenities and property features, there is a large area of service and commercial space for supportive service providers.

The Center for Veterans Issues (CVI) will provide Veterans Manor residents with case management, social work, education and training, and employment assistance. CVI also assists in service coordination for counseling and therapy, along with referrals for health care, dental care, daily living assistance, SSI/SSDI and veterans benefits.

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NCSHA Reviewing Recommended Practices for LIHTC Underwriting, Allocation

The National Council of State Housing Agencies is moving forward with a review, for possible changes, of its existing recommended practices for state housing credit agencies for low-income housing tax credit underwriting and allocations.

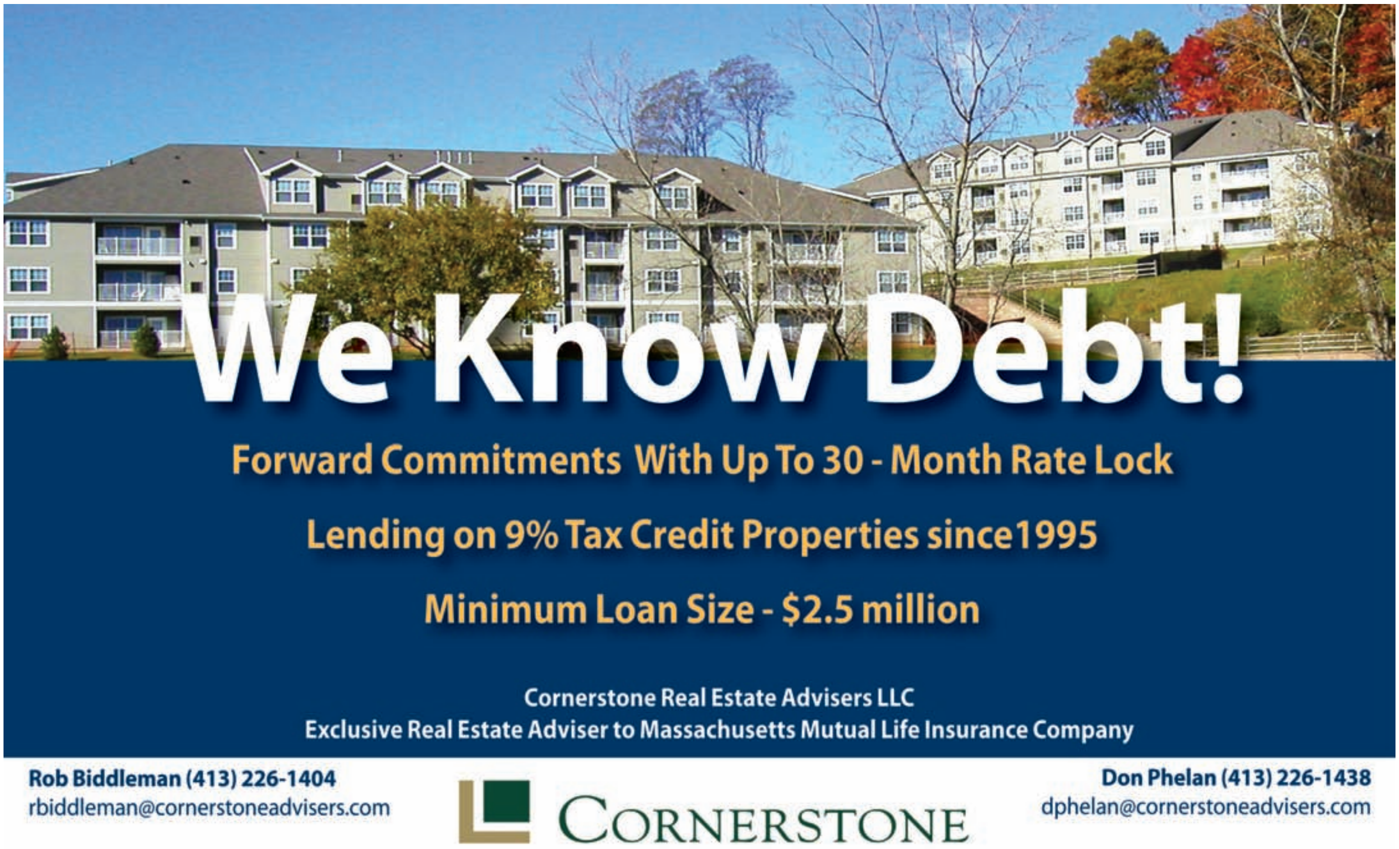
Initiated earlier this year, the review is being carried out by NCSHA's Housing Credit Task Force, which discussed the project again at the organization's recent housing credit conference in Chicago.

NCSHA's recommended practices, last revised in late 2003, are voluntary standards that state HCAs are urged to incorporate in their standards and procedures for underwriting proposed projects seeking housing credits, and in deciding how much credit to award. These so-called "best practices" include recommendations in 17 areas, relating to such as debt coverage requirements, operating expenses, operating reserves, per unit cost limits for projects, limits on various fees, and market analysis.

According to NCSHA official Garth Rieman, NCSHA has already surveyed state housing finance agencies for their comments on the existing recommended standards for the current project. There is a plan to seek input shortly from other housing credit industry participants as well.

Rieman anticipated that there will be some minor changes made to the existing standards, and perhaps some additional recommendations. He said the presentation of recommended changes by the task force to NCSHA's board of directors could possibly occur this December.

(For background article on current standards, go to http://www.housingonline.com/Documents/ncsha standards.pdf) TCA



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NH&RA News

Information on NH&RA and its Councils is available online at http://www.housingonline.com

CEFAH Issues Recommendations for Increasing Multifamily Weatherizations

The National Housing & Rehabilitation Association's Council for Energy Friendly Affordable Housing (CEFAH) recently issued an 85-page report that recommends a series of actions to increase the amount of federal Weatherization Assistance Program funds used to finance energy efficiency improvements to multifamily rental housing properties.

The recommendations are designed to address two issues: the low expenditure rate for the extra $5 billion in weatherization funds provided by the 2009 stimulus act; and impediments to the use of weatherization funds in multifamily rental properties. State grantees must spend the extra weatherization dollars by March 2012 or return them.

"Given the need for these funds to retrofit the affordable multifamily housing portfolio and the time constraints for the funding, emergency action is needed," says NH&RA Executive Director Thom Amdur.

Weatherization funds are allocated through state grantees to sub-grantees – local nonprofits and governmental entities – to finance energy-efficiency improvements to housing units occupied by low-income households. Sub-grantees have traditionally spent these dollars mostly to weatherize single-family homes, even though multifamily rental buildings are eligible.

The new report, *Improving the Implementation of the Weatherization Program*, argues that the weatherization program rules are preventing widespread use of weatherization funds for multifamily buildings. To remedy this, the report recommends:

- The U.S. Department of Energy implement an emergency rule permitting weatherization funds to be provided by sub-grantees as loans rather than grants.
- A legislative amendment explicitly permitting weatherization funds to be loaned to eligible multifamily projects.
- Various steps to expand the number of weatherization sub-grantees with technical capacity to perform energy audits and make weatherization improvements to multifamily properties, and funding for multifamily retrofit technical consultation and training.
- Allowing multifamily owners to hire their own contractors to weatherize their buildings.
- Making more units in mixed-income, multiple-building projects eligible for weatherization assistance.

CEFAH has sent the report to the White House, federal agencies, and key members of Congress. The report followed recent meetings by CEFAH with Administration officials. CEFAH is seeking another meeting, while continuing to press for regulatory or legislative action.

(For a copy of the report, contact Thom Amdur, tambdur@housingonline.com)

Upcoming Conferences

To register, and for more information, go to http://www.housingonline.com

National Council of Affordable Housing Market Analysts
2010 Affordable Housing Underwriting Conference & Annual Meeting
October 5-6, 2010
Doubletree Hotel Magnificent Mile, Chicago, Ill.

National Housing & Rehabilitation Association
2010 Fall Developers Forum
October 19-20, 2010
The Langham Hotel, Boston, Mass.

National Housing & Rehabilitation Association
2011 Annual Meeting
February 23-26, 2011
Bonita Springs, Fla.

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NH&RA News, continued from page 16

NCAHMA Celebrates Victory in FHA Underwriting Changes

The National Council of Affordable Housing Market Analysts celebrated a victory in a change to the underwriting rules for FHA's multifamily mortgage programs, contained in a package of revisions in recent HUD Mortgagee Letter 2010-21.

The change generally requires that, in the case of a multifamily project applying for an FHA-insured mortgage, the appraisal and the market study must be performed by different persons.

NH&RA Announces Dates for Fall Forum, Timmy Awards

NH&RA will hold it 2010 Fall Developers Forum conference on October 19-20 at The Langham Hotel in Boston, Mass.

One highlight will be the presentation on October 19 of NH&RA's 2010 "Timmy" Awards, which recognize outstanding projects funded with federal historic rehabilitation tax credits.

Historic Rehabilitation Tax Incentive Protected

NH&RA's Historic Preservation Development Council has hailed recent legislative action by the U.S. House of Representatives staving off an attack on the federal historic tax credit.

The House approved, as part of the financial regulatory reform bill (H.R. 4173), an amendment that dropped a Senate provision that would have curtailed the ability of banks, through bank holding companies, to invest in certain private funds, including those that finance historic credit projects, if the funds aren't deemed to primarily promote the public welfare. President Obama signed the sweeping legislation into law on July 21. TCA

Key Bills at a Glance

Following is the status of key bills pending in Congress that NH&RA and its Councils are advocating or supporting:

H.R. 4213. Would extend LIHTC Section 1602 exchange program for 9% credits, NMTC program, GO Zone LIHTC deadlines, GO Zone enhanced historic tax credits. Passed by House; provisions stripped out in Senate on 7/20/10.

S. 3326. Would extend carryback period for LIHTC investments to five years, extend the Section 1602 exchange program for one year, and expand the exchange program to also cover 4% credits.

H.R. 2628, S. 1583. Would provide multi-year extension of new markets tax credit, increase annual funding, exempt NMTC from alternative minimum tax. Introduced.

H.R. 3715, S. 1743. Would make numerous amendments to enhance federal historic and rehabilitation tax credits. Introduced.

H.R. 3527. Would increase FHA multifamily loan limits for extremely high-cost areas and elevator buildings. Passed by House; pending in Senate.

H.R. 2336. Creates multiple incentives for owners of real estate to undergo energy retrofits. Passed by House Financial Services Committee.

H.R. 4868. Comprehensive affordable housing preservation bill. Introduced by House Financial Services Committee Chairman Barney Frank (D-Mass.). Mark-up expected.

Choice Neighborhoods Initiative: Proposed by Administration. No bill introduced yet.

Transforming Rental Assistance: Proposed by Administration.

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CRA two point zero

Completion of the mammoth financial-reform legislation sets the stage for a 2011 debate about restructuring the federal Community Reinvestment Act. This is long overdue – today's financial world would have been unimaginable back in 1977, when CRA was born – and it should therefore be no surprise that CRA two point zero should be a ground-up reinvention from first principles, not a grab-bag of twiddles and tweaks.

What's the Same as 1977, and What's Different

Banks and financial institutions exist under and are protected by a regulatory umbrella which allows them to profit by taking money from the public (deposits) at cheap rates and lending or investing it at market rates. Banks therefore have a duty to redeploy their capital back into the segments from whence they got it – on a commercially viable basis, with government absorbing non-commercial risk. CRA sought to compel banks to explore how deploying capital in poor areas could actually pay. These core premises are every bit as important today as at CRA's enactment in 1977.

Almost everything else is different. Geographic footprint, the cornerstone of CRA assessment areas, is anachronistic in a world of internet banking and global capital markets, where money has no location. Complex capital forms have mutated far beyond CRA's simple typology of debt, equity, and community service. These new, sophisticated, interdependent value chains have spawned whole new species of participants that transact with financial institutions by converting capital resources into desirable social outcomes. Demographic and socioeconomic information is now available with real-time high-resolution granularity.

A third of a century's ossification of procedures against an obsolete legislative schema means that CRA now restricts and oversimplifies capital flows. In the low-income housing tax credit, as I wrote in March, today's CRA can act precisely contrary to its statutory intent, a capital tourniquet that keeps money *out* of many markets instead of flowing it in to some markets.

New Design Principles for CRA Two Point Zero

David A. Smith

In light of that, where do we start? Try a principle of inclusivity – when in doubt, more things are in, more things count, and more is focused on the target income level than the geography.

1. **More institutions encompassed.** All major financial institutions – not just banks – should be subject to CRA. Any major entity that plays in the U.S. financial markets and has explicit or systemically implicit federal backing – that is, insurance companies, investment banks, commercial banks, to name the obvious clusters – should have a CRA obligation.

2. **More capital forms recognized.** Rather than a bright-line division into debt and equity, think in terms of Spends made and Risks accepted. Guarantees, swaps, securitized strips, credit enhancement – every fragmented capital slice that has a commercial purpose should be eligible for inclusion as a CRA-qualifying deployment.

3. **More alignment with economic distress, less with geography as its proxy**. Instead of a zip code definition of service area, aim at socioeconomic need. With the information now available, one could develop a synthesized Need Index incorporating quantitative publicly-available data – say, income relative to median, percentage of poor households, unemployment rate, economic growth rate. Deploying capital into higher Need Index areas

Guru, continued on page 19

Guru, continued from page 18

could get more points, as could higher weighting for capital put into deep income-targeted properties.

4. **More innovation credited.** In addition to broadening the eligibility of Spends and Risks for CRA credit, give bonus points for Innovation – introduction of new Spend and Risk forms that deliver capital and credit to challenged populations or real estate asset classes (e.g., affordable housing). True, this has to be balanced with capital-innovation prudence – we've seen too many Sorcerer's Apprentices – but that can be handled through capital-adequacy regulation and not separately specified in CRA.

5. **Eliminate the churning incentive.** CRA in LIHTC is like the prize in a box of Cracker Jacks: To get the prize (CRA credit), you have to buy the whole box (ten years of LIHTC), and you get no prize for eating anything more than the first few bites (three years' assessment horizon). Why not allow Holds – a long-term investment that is still owned many years later – to count as a CRA refresh (say, every five years) on the theory that to hold something is equivalent to buying it from yourself?

6. **Uniform examination.** Only one part of our antiquated 1977 banking system remains unchanged – the multiplicity of regulators and CRA examining bodies. This must be standardized, preferably under a single administrative agency.

We'll never get the CRA we need unless we're clear about the CRA we want. Let's get the debate into open space where we return to what CRA is *for*, not what it currently does. The more we circulate bold ideas, the better our chances.

David A. Smith is Chairman of Recap Real Estate Advisors, a Boston-based firm that optimizes the value of clients' financial assets in multifamily residential properties, particularly affordable housing. He also writes Recap's free monthly essay, State of the Market, available by emailing dsmith@recapadvisors.com. TCA

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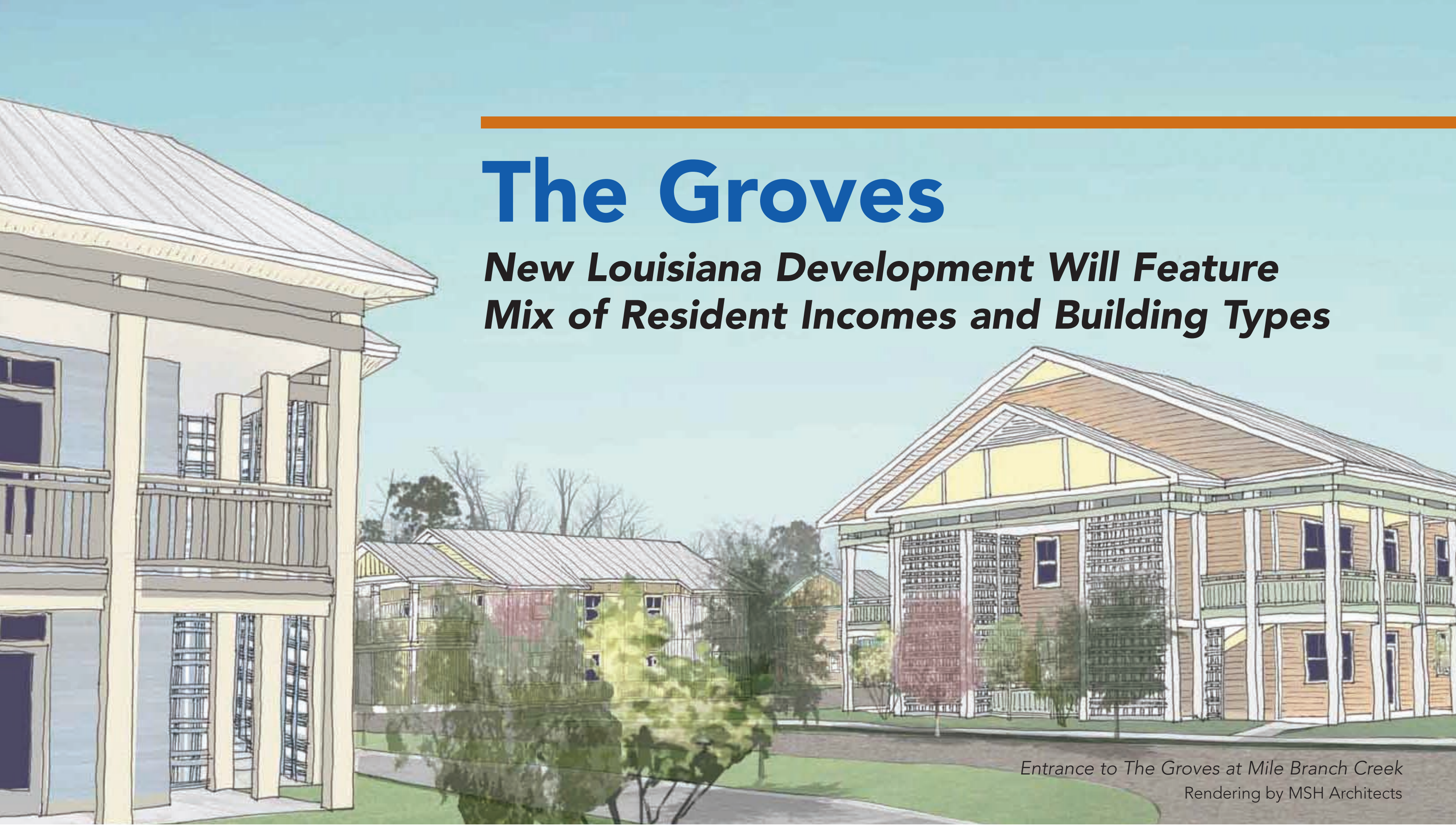

The Groves

New Louisiana Development Will Feature Mix of Resident Incomes and Building Types

Entrance to The Groves at Mile Branch Creek
Rendering by MSH Architects

"When you look at it, it's almost like three different transactions in one," says Amber Seely, of Renaissance Neighborhood Development Corporation (RNDC), the New Orleans-based developer of The Groves at Mile Branch Creek, a mixed-income planned unit development rising from the ground in Covington, La.

Shawn Escoffery Photography

Amber Seely

"There's one project that's just the infrastructure," says Seely. "The second project is developing the multifamily rental housing. And then there's the third project, doing single-family."

Recently closed and now under construction, The Groves is creating a vibrant new community where none existed while balancing local architectural tastes and scale with modern financing techniques. Covington, a city of about 9,700 in St. Tammany Parish, is a rapidly growing bedroom community about 45 miles north of New Orleans on the north shore of Lake Pontchartrain.

RNDC, created by the Greater New Orleans affiliate and the national office of Volunteers of America, is developing the infrastructure (e.g., roads, sewers) for the entire 15-acre site; 35 lots for construction of single-family homes intended for low- and moderate-income families; and a 94-unit rental housing component funded in part by the federal low-income housing tax credit (LIHTC).

It's not your standard apartment building. Rather, the rental component will consist of 24 separate buildings –duplexes, fourplexes, sixplexes, and eightplexes, none over two stories tall. In all there will be 14 different building types, including six different kinds of duplexes differing in appearance mostly on the outside.

"We wanted the development to feel like a community, a neighborhood," says Seely. "So we felt like part of encouraging that kind of sense of togetherness could be communicated through the design…Most neighborhoods develop over time, and not every building looks the same – there's variety. We wanted to make sure that The Groves didn't look cookie cutter."

The low scale and lower density of the overall project, together with a mix of affordable and market-rate ownership and rental units, helped RNDC to win local acceptance for The Groves and local approvals, including the re-zoning of the 15-acre site from agricultural. "This is the kind of affordable housing that is right for this community," says Seely.

The vacant site, located near downtown and one of the few undeveloped pieces of land in the area, abuts the West 30s Neighborhood, which Seely describes as a "pretty distressed community." With The Groves, RNDC is building on work done in the neighborhood by a local nonprofit, Habitat for Humanity St. Tammany West. This

The Groves, continued on page 21

The Groves, continued from page 20

Habitat affiliate has already constructed a number of houses in the neighborhood for low-income families, financed with new markets tax credits, and helped to secure the purchase of the 15-acre site for The Groves for $900,000 from a local family.

Home Lots, Rent Levels

The local Habitat chapter plans to acquire at least 20 of the 35 home lots at The Groves to build modest single-family homes for sale to low- and moderate-income families. Lots not purchased by Habitat will be sold to other developers for the same purpose.

Of the 94 rental units, five will be supportive housing units (one-bedrooms) leased to households making 20% or less of the area median income (AMI) for $130 per month. Another set of one-, two-, and three-bedroom units will be leased to households up to 40% of AMI at monthly rents ranging from $355 to $406. A third set of units of similar size will leased to households up to 60% of AMI at monthly rents ranging from $523 to $739. Finally, a fourth set of market-rate units of similar size will be leased at monthly rents ranging from $700 to $900.

The multifamily buildings and the single-family homes will face a two-acre park located at the center of the property.

There's a significant need for additional affordable housing in Covington, which has a significant number of both high-income and low-income residents as well as rising home prices. While spared from damage by Hurricane Katrina in 2005, the city experienced a huge influx of evacuees from New Orleans, many of whom have remained. Parish leaders commissioned a study on local housing needs. "Some of the results of this study were that not only do we need more housing, but we need more affordable housing," says Seely, who adds, "There aren't a lot of rental options in this area."

Multiple Funding Sources

RNDC had to assemble two separate funding packages: one for the infrastructure and single-family lots, and a second for the multifamily rental housing component.

Funding sources for the roughly $20 million rental component include nearly $5.7 million in housing credit equity; a combined $4.3 million in federal Tax Credit Assistance Program (TCAP) and Section 1602 exchange dollars; an $8.7 million loan capitalized by a federal disaster recovery Community Development Block Grant (CDBG) received from the state Office of Community Development; a permanent mortgage from New Orleans-based First NBC Bank of about $1 million; and a deferred developer's fee of $515,000.

RNDC had to zig and zag before nailing down the tax credit equity. It received an allocation of $1.6 million per year in 9% housing credits from the Louisiana Housing Finance Authority (LHFA) in February 2009, in the midst of the turndown in the LIHTC equity market. "Trying to find an investor in that market was really hard," recalls Seely. "We approached many different investors, and it ended up being either too big for some of the funds, or too small for some of the other funds. So we started talking to a consortium of regional banks."

First NBC Bank, which had done LIHTC investments before, was interested in purchasing half the housing credits. RNDC found two other banks willing to buy the rest – but they later backed out. First NBC Bank was still interested, but only for half, which it later bought for 72 cents per dollar of credit. At the same time, the bank didn't want the deal placed in a tax credit fund with other LIHTC properties, which might have provided the rest of the equity.

Stymied and confronted with a funding gap, RNDC approached LHFA to request additional funds. It eventually returned part of the original housing credit allocation, and receiving separate awards from LHFA of $1 million in TCAP funds – as a 15-year, third-position soft loan – and $3.3 million in exchange funds, as a grant. In first position is the permanent mortgage from First NBC Bank, which is also the construction lender. In second position is the $8.7 million CDBG loan.

To reduce the construction risk to First NBC Bank, the TCAP and exchange funds will be drawn down first to pay construction costs until they are exhausted. Subsequent construction draws will be funded 60% from the CDBG loan and 40% from First NBC's construction loan.

The total development cost for the infrastructure for the 15-acre site is $3,850,000. Funding sources include a separate CDBG grant of $1.4 million from St. Tammany Parish; $1,350,000 from the multifamily lot sales; $850,000 from the single-family lot sales; and $250,000 in foundation support from the Major League Baseball Players Trust. TCA

Preventive Medicine

Preparing a Tax Credit Property for the State Agency's Physical Inspection

By A. J. Johnson

A. J. Johnson

Federal low-income housing tax credit properties must ensure compliance in three major areas – affordability, eligibility, and habitability – to prevent the loss of tax credits. Rents must be properly restricted, residents must be eligible, and buildings and units must be suitable for occupancy.

State housing credit agencies (HCAs) must inspect each LIHTC property at least once every three years. During this inspection, the HCA must review at least 20% of the tenant files, physically inspect the same 20% of units, and inspect all common and public use areas. File reviews and physical inspection may be done at different times and by different people. The HCA must report incidents of noncompliance to the Internal Revenue Service on Form 8823, which may lead to a loss of tax credits for the property. Noncompliance that is corrected before the HCA's review can prevent the issuance of an 8823.

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HCAs must assess whether LIHTC properties are in safe, decent, sanitary condition, and in good repair, based on either the U.S. Department of Housing and Urban Development's Uniform Physical Condition Standards (UPCS) or state/local inspection standards [see IRS Regulation 1.42-5(d)(2)]. The HCA's qualified allocation plan should identify which standard is to be used.

The HCA may report physical deficiencies, discovered either from its own inspection of the property, or from information provided on the owner's Annual Owner Certification (AOC) form.

The physical inspection must cover:

- The site;
- Building exterior;
- Building systems;
- Dwelling units;
- Common areas; and,
- Health and safety concerns.

Before the day of the HCA's physical inspection, the management of an LIHTC development should thoroughly inspect the property. This "pre-inspection" should cover the site, all building exteriors, all building systems, all common areas, and all housing units. Areas within a building that are not residential units are considered common areas; the inspector must have access to all these areas. The pre-inspection should be completed using the same standard that the HCA will use in its inspection – either UPCS or state/local standards.

Any inspectable item at a property must function as designed by the manufacturer. For example, while the code does not require that each unit be equipped with a microwave oven, if an apartment has a microwave, it must work as intended.

The HCA's physical inspection is "hands-on" –the inspector will physically test the function of all windows, doors, fixed lighting, stoves, etc. Management staff

Inspection, continued on page 24

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Inspection, continued from page 22

should do the same in its pre-inspection.

Keep in mind that all vacant units should be pre-inspected as well. The IRS has made it clear that a vacant unit that is not suitable for occupancy will be considered a "down" unit and reported as out of compliance. Allowing for reasonable turnover time (e.g., two weeks), all vacant units should be ready for occupancy.

Examples of Common Deficiencies

Following are examples of areas where management can take steps to prepare for the HCA's visit and prevent the issuance of an 8823 (and correct ahead if necessary):

- **Water Heater:** Make sure that the pressure relief valve extends to within 18 inches of the floor;
- **Water Heaters and Furnaces:** Vent stacks on gas-operated water heaters or furnaces should be properly aligned;
- **Baseboard Heaters:** All baseboard heaters must have covers;
- **Electrical Panels:** Access to electrical panels must not be blocked by furniture or other items;
- **Doors:** Factory-installed seals on exterior doors, such as building or unit doors, must be in place and undamaged; security doors must be operable and not have dual-side key locks; exterior door hardware locks or latches must function as designed;
- **Kitchen:** All stove burners must work;
- **Plumbing:** There should be no leaks in pipes and faucets;
- **Clothes Dryers:** Make sure these are properly vented to the outside (either from units or laundry rooms);
- **Trash Chutes:** Be sure hardware is in place and that the chute door closes properly;
- **Trash Receptacles:** These must be adequately sized for the property and cannot be overflowing; and,
- **Electrical Outlet and Switch Plate Covers:** These cannot be cracked or broken.

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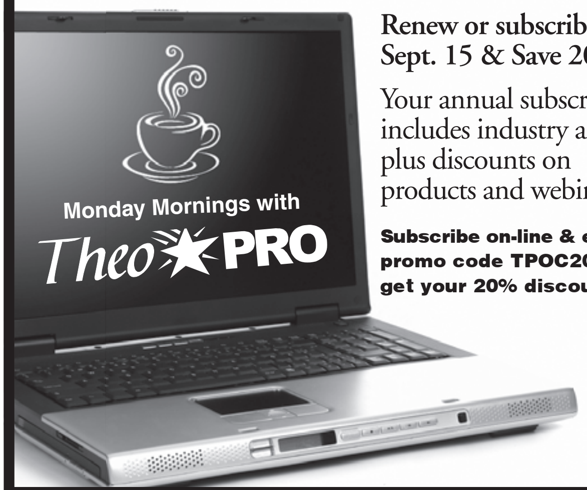

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Exigent Health and Safety Issues

Management staff should pay particular attention to potential "exigent health and safety" issues during the pre-inspection. These urgent issues requiring immediate action, if discovered and reported by the HCA, have the highest potential for triggering additional IRS scrutiny. Examples of serious violations are:

- Propane, natural, or methane gas leaks;
- Exposed wires or open electrical panels;
- Water leaks on or near electrical equipment;
- Blocked or unusable emergency or fire exits;
- Blocked fire escapes or ladders;
- Missing or misaligned chimney for gas-fired water heaters or HVAC units;
- Window security bars preventing exit;
- Expired fire extinguishers; and,
- Inoperative or missing smoke detectors.

When preparing for the HCA's inspection, give special attention to:

1. **Electrical:** All electrical boxes, panel boxes, fuse boxes, disconnect boxes, timer boxes, etc., are subject to inspection, regardless of the location. Boxes

Inspection, continued on page 25

Inspection, continued from page 24

will be inspected even if behind locked doors; they must be available to the inspector. Electrical panels and fuse boxes must be available for inspection, whether secured or unsecured. All other electrical boxes, disconnects, timers, etc., will not be opened by the inspector and no deficiency will be cited if the box is secured at the time of the inspection.

2. **Blocked Egress:** All living areas/rooms in a unit and all common area rooms must have two independent and unimpeded means of egress (escape) if so designed. Exempt are windows above the third floor that do not serve as a means of access to a designed escape route. *If local code differs from this standard, a copy of the local standard should be provided.*

Inspection Day Tips

On the day of the HCA's inspection, make sure that you have system certificates available, as well as unit sizes, rent roll, and site map.

In addition:

- Do not try to postpone the inspection indefinitely. The IRS recommends that the state accept no more than a 45-day delay;
- Do not schedule other maintenance/service of any inspectable items for the day of the inspection, such as elevators, etc. Items "out of order" for maintenance will be considered inoperable;
- Make sure that items that were worked on by maintenance staff prior to the HCA's inspection have been completely placed back in working order; and,
- Carry a notepad and camera during the inspection to document any findings.

The physical inspection portion of the state credit agency's LIHTC review is critical to the ability of a property to claim its tax credits. Preparation in this area will go a long way toward preventing 8823s and protecting the equity investor's tax credits.

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. TCA

Low-Income Housing Tax Credit Audits Are Increasing

Internal Revenue Service agents are conducting a greater volume of audits of tax returns for low-income housing tax credit (LIHTC) issues. In a change in pattern, most of these audits are being generated by IRS revenue agents in the field rather than initiated by IRS headquarters as the result of IRS Forms 8823, according to IRS senior analyst Grace Robertson.

In the past, most LIHTC audits were initiated by IRS headquarters as the result of a filed 8823. State housing credit agencies file Form 8823 to report the discovery or correction of non-compliance with LIHTC program requirements in a housing credit project.

"There is a growing volume and a significant volume of work that's being selected by other [IRS] people for other reasons, and the Section 42 credit is surfacing as an issue," Robertson said in an interview. "Those may be audits of partnerships that own the

Audits, continued on page 26

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Audits, continued from page 25

properties; they may be the investor returns, syndicator returns, developer returns. Some of the [syndication] funds are being audited as well."

She said the LIHTC issues being examined in audits are the "same as always." Among these are: whether a taxpayer is claiming more credit than they should; the taxpayer's eligible basis; and, for investors, whether they have claimed the same amount of credit indicated on their K-1, have basis to claim the credit, or have sold their interest.

Robertson didn't know why the share of LIHTC audits generated by field agents has increased.

Other Comments

Robertson also reported that there have been an increasing number of audits based on 8823s flagging non-compliance in individual properties with LIHTC physical condition requirements. Some audits have resulted in adjustments to the credit.

One example of non-compliance that has been found, she said, is not bothering to clean vacant units in some properties with high vacancy rates. There have been safety issues as well. Under the program, units must be physically suitable for occupancy in order to qualify for housing credit.

Robertson said physical condition non-compliance is one of the top three current causes of audits based on 8823s. The other two are taxpayers not reporting dispositions or failing to recapture credits upon disposition, and non-compliance involving first-year certifications and Form 8609.

In another area, Robertson is partway through drafting a new version of an IRS audit technique guide for the LIHTC program. She noted it will be drastically different from the previous, discontinued guide, and will walk revenue agents through the steps of conducting an audit pertaining to LIHTC issues. "The focus is going to be more on the eligible basis issues and how to audit those issues," Robertson said at a Chicago conference on June 25. She said she has outlined 18 chapters and is working now on No. 8.

Robertson's complete initial draft is to be submitted by year-end for internal IRS review. After review and modifications, it will be made available for public comment, and then revised as needed and released in final form. TCA

Senators Proposed Special NMTC Allocation for Gulf

Five U.S. Senators led by Mary Landrieu (D-La.) have proposed a package of federal tax breaks for Gulf Coast areas hit hard by the oil spill. One piece would provide for a special, two-year allocation of federal new markets tax credits for projects in the region. TCA

People in the News

Stephanie Meeks, an experienced nonprofit leader, is the new President of the National Trust for Historic Preservation in Washington, D.C. Meeks was previously President and CEO of Counterpart International, a $110 million development organization operating in 25 countries.

J. Ronald Terwilliger has been elected as the new Chairman of the Board of Trustees of Enterprise Community Partners, Inc., succeeding Norman Rice. An Enterprise board member since 2007 and current co-chair of the Enterprise Real Estate Leadership Council, Terwilliger is also chairman emeritus of Trammell Crow Residential, a national residential real estate company and multifamily housing developer .

Marcia Kolb has been appointed Assistant Commissioner for Multifamily Business at Minnesota Housing, the state housing finance agency.

Steve Johnson has been promoted to Director of Commercial Lending at the Colorado Housing and Finance Authority. In his new role, he will lead the agency's multifamily lending, low-income housing tax credit allocation, and small business lending teams.

John Mackel has joined Reznick Group, a top national CPA firm, as a Senior Manager in the firm's Valuation and Transaction Advisory Group. Based in Los Angeles office, he will expand the firm's national focus on commercial real estate appraisal, valuation, and advisory. Mackel was previously at Cushman & Wakefield. TCA

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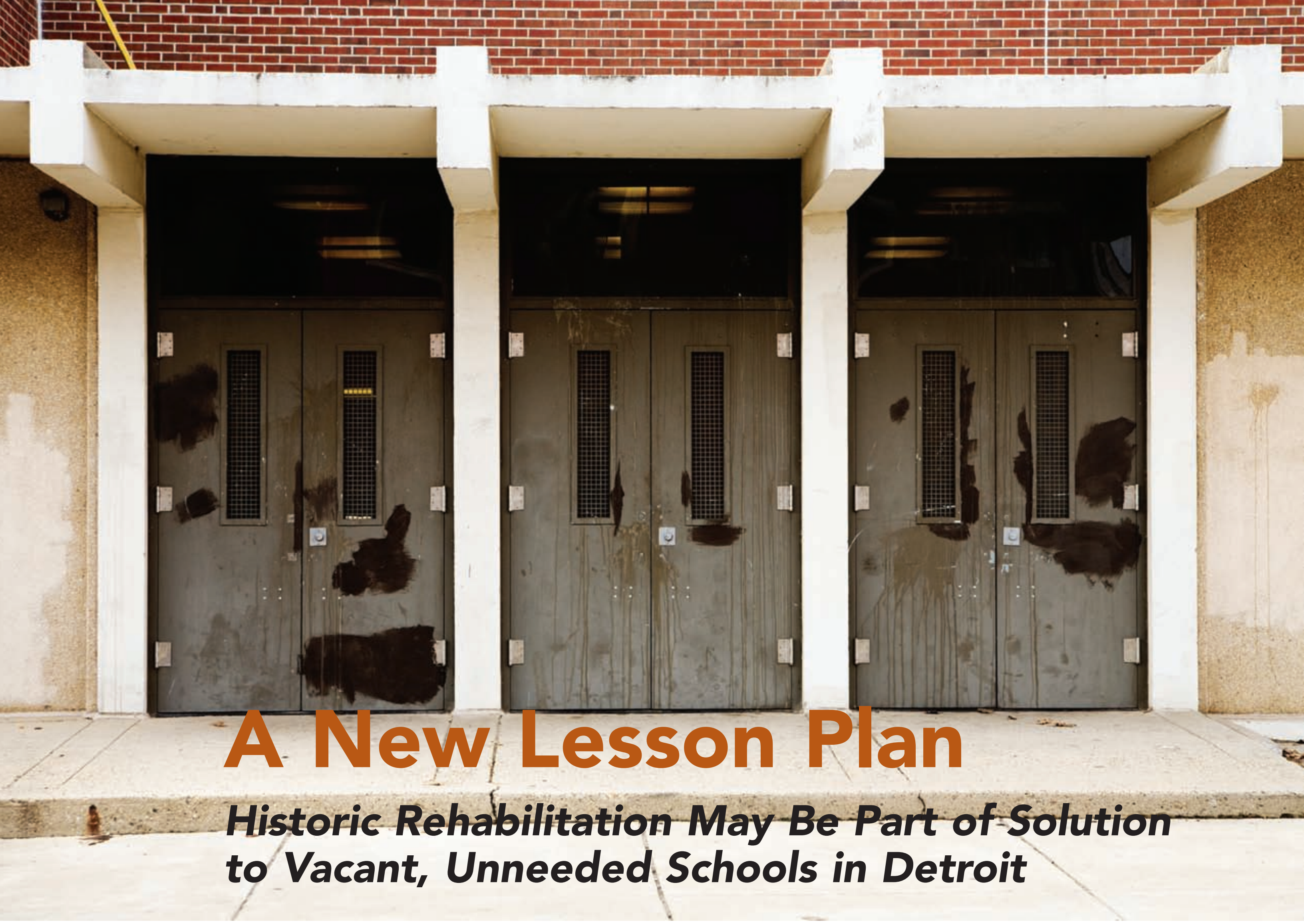

A New Lesson Plan

Historic Rehabilitation May Be Part of Solution to Vacant, Unneeded Schools in Detroit

It's no secret that the city of Detroit has been ravaged economically by a seemingly endless recession and declining manufacturing base. In response, many residents have reacted with their feet. As of July 1, 2006, the city had an estimated population of 871,121, a decline of 8.4% from January 2000. Once the fourth-largest city in the U.S., Detroit is now No. 11.

With a smaller population and fewer tax revenues to fund municipal services, Detroit, like a number of other cities nationwide, is trying to figure out what to do with excess public properties that it doesn't need or can't afford, including many public schools.

Between 2002 and 2008, the number of students enrolled in the city's public schools fell from 157,003 to 94,054. The Detroit School District has closed nearly 150 public schools since 2003 and in the past year – confronted by a $363 million deficit – has sold four schools.

More recently, though, a possible solution to both help in disposing of excess school buildings while triggering economic development appears to be in germinating.

The Michigan State Historic Preservation Review Board has approved plans to nominate 88 of the Detroit's public schools for listing on the National Register of Historic Places, and is shortly expected to submit a formal nomination to the National Park Service. Federal approval of the nomination would open the door to eligibility for the 20% federal historic rehabilitation tax credit for expenditures to renovate these buildings, potentially making some of these properties more attractive to developers.

The impetus for the current initiative began with the city's Historic Designation Advisory Board, which expended $33,000 and more than a year to collect detailed information and histories about all city schools built before 1960 that are still standing.

The schools to be nominated for listing on the National Register date back as far as the late 1800s, and a number of them have large campuses. They include:

- **M.M. Rose School (1896)**, 5505 Van Dyke St. One of the oldest schools in Detroit.

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Detroit, continued from page 28

- **Lewis Cass Technical Institute (1922)**, 2421 Second Ave. One of the first public vocational schools in Michigan, this architecturally majestic building became obsolete when a modern new Cass Tech High School was built across the street.

- **John J. Pershing High School (1929)**, 18875 Ryan Rd. Named after the Army general chosen by President Wilson to command the American Expeditionary Forces in Europe during World War I.

One developer who has been renovating local schools into mixed-use projects is Detroit resident Joel Landy. Among other things, he has renovated several buildings that made up the former Burton School into a new commercial development. Among the tenants so far are a theater/entertainment venue, a nonprofit organizations, and artist studios.

(For interactive map showing photos and locations of the 88 schools, go to http://detnews.com/article/ 20100705/ SPECIAL01/100702003/1026/Interactive - map--Detroit-s-historic-schools) TCA

Massachusetts Extends State Historic Tax Credit

Massachusetts Gov. Patrick Deval has signed into law a FY 2011 budget bill that includes an extension of the state's historic rehabilitation tax credit program. The measure extends the program by six years, through calendar 2017. The program, which is administered by the Massachusetts Historical Commission and provides a maximum 20% tax credit, has an annual volume cap of $50 million. TCA

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The End
NEXT EXIT

The End at the Beginning

Think Early About the Unwind of New Markets Tax Credit Deals

In a federal new markets tax credit (NMTC) transaction, just getting to the closing table can be exhausting enough for participants. So who wants to think about how the transaction will unwind in seven years at the end of the NMTC compliance period?

But according to speakers at a recent conference, the plans for implementing an exit strategy should be formulated at the front end of the deal, to avoid problems and potentially costly mistakes down the road. The program's first NMTC projects are reaching the seven-year milepost now.

"Most developers are not prepared for the basic mechanics of an unwind, the 'who does what, when and how'," said Al Shehadi, of Enterprise Community Investment, Inc., in comments at a Washington, D.C. conference held by Novogradac & Company LLP. "You should start to prepare for the unwind at close."

Columbia, MD.-based Enterprise, a leading national provider of community development capital and expertise, has established itself as one of the largest NMTC allocatees in the nation. Enterprise has been awarded more than $600 million in NMTC allocation and financed more than 45 NMTC projects throughout the U.S. Its first group of NMTC projects will begin unwinding in 2011. "We have started to think about the mechanics of unwinding, both for our own portfolio and in terms of the consulting practice that we have with developers and other CDEs," Shehadi noted.

Al Shehadi

NMTC transactions can have complicated deal structures. This is particularly true for leveraged NMTC transactions. In a leveraged structure, an investment fund is created, which collects and combines debt received from a so-called "leverage" lender with the equity received from the investor to make a qualified equity investment in the CDE. The advantage of a leverage structure is that it allows a project to NMTC-enhance a larger proportion of the total funding sources. The CDE then typically makes two loans to the QALICB (a senior "A" loan, mirroring the "leverage"

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Exit Strategies, continued from page 30

loan and subordinate "B" loan, reflecting the net NMTC equity proceeds to the project).

At the end of the seven-year compliance period, the investor has claimed all of the new markets tax credits and wants to exit the transaction, and the loans need to be paid off or refinanced.

Transaction documents typically give the investor an option to "put" – sell its interest – to the developer/sponsor for a pre-determined price during a limited time period. If the put is not exercised by the end of this put period, there is generally a subsequent "call" period during which the sponsor can buy out the investor's interest. The sponsor is typically responsible for notifying the investor of the approaching put date. Shehadi said put and call exercise periods generally range from 3 to 6 months.

Speakers said there is no industry standard for put prices; they vary widely, from a nominal $1,000 up to significantly larger amounts. Call prices must be at fair market value, usually determined by an appraisal at the time of the call exercise.

Three Goals

People doing NMTC transactions, Shehadi said, should have the following three goals in preparing for the unwind of an NMTC transaction:

- "Be prepared for your unwind well before the end of the seven-year new market tax credit compliance period. You don't want to be starting to think about how you transaction unwinds four or five months after the compliance period ends and you're well into your put period."
- "The sponsor-developer needs to at least give some thought to what happens if the put is not exercised [by the investor], and what you would do in that scenario." In 99 of 100 cases, the investor will exercise their put, the speakers said. But if they don't, sponsors need to be prepared to exercise the call and to know in advance where they will get the money to cover the call price if it will be more than a nominal amount.
- Where there is hard third-party leveraged debt maturing at the same time as the NMTC unwind, "in addition to the unwind, you're going to have a refi. You need to be prepared for it, and think through that refi at the same time you're thinking through the unwind."

Shehadi advised deal participants (sponsors, investors, CDEs) to start preparing for the unwind at the time the NMTC transaction closes. In particular, participants should prepare a summary memo outlining the details of the future unwind, including the put date; put period; put price; the put process and which party initiates it; the entity that can exercise the put; the call period; the procedure for determining the call price; etc.

"Six months or more prior to the end of the [NMTC] compliance period, dust that memo off, pull it out," says Shehadi. "You've got your game plan."

After preparing the deal unwind memo, Shehadi concluded, "Remember where you put it. There's no point putting all this information down and then not being able to find it in seven years." TCA

Illinois Expands New Markets Tax Credit Program, Creates New Angel Credit

On June 24, Illinois Gov. Pat Quinn signed into law a bill (S.B. 2093) increasing the size of the state's new market tax credit program, and establishing a new economic development credit.

The act doubles the annual cap on the amount of state NMTCs that can be awarded to $20 million, an increase estimated to generate an additional $125 million in private investment in Illinois businesses. The state program, begun in 2009, exhausted the previous cap of $10 million in six months. Illinois' NMTC program provides tax credits for new investments in small businesses in low-income communities.

The law also creates a new angel investment tax credit, designed to help innovative new business get off the ground. An investor can claim a tax credit equal to 25% of their investment in a qualified business venture, up to a credit cap of $500,000. The program has a $10 million annual volume cap. TCA

State Roundup

New York Legislators Mull Curbs on Credits, Enhancement Credit

New York State legislators have advanced legislation that would defer expenditures for many state tax credit programs for three years, including for historic rehabilitation and low-income housing and brownfield clean-up and redevelopment.

Special budget legislation (A. 9710-C), designed to close an enormous gap in the state budget year that began July 1, was approved by the state Assembly on July 1 and sent to the Senate. A similar bill is pending (S. 6610-B) in the Senate, which hadn't acted as of July 19.

The bills would prevent taxpayers from fully claiming the regular tax credit amount for new projects under 32 different state tax credit programs during 2010, 2011, and 2012. A company or investor could claim the first $2 million in tax credits during this period, but any amounts above could not. Deferred tax credit amounts would be paid to taxpayers in tax years 2013-2015. The $2 million cap would be per taxpayer, not per project.

Separately, the Assembly and Senate in mid-June approved bills (A. 10839/S.7556) that would expand the investor base for the state historic tax credit program by allowing banks and insurance companies to claim the rehab tax credit to reduce state bank and insurance franchise taxes.

Delaware Historic Tax Credit Extended

Delaware Gov. Jack Markell has signed into law a bill (S.B. 209) extending the state's historic rehabilitation tax credit for 10 years. The program, which expired June 30, has a $3 million annual volume cap. The tax credit is equal to 20% of qualified rehab expenditures for income-producing buildingss; an extra 10% is provided for low-income housing projects.

Massachusetts Releases Amended 2010 QAP

The Massachusetts Department of Housing and Community Development has released an amended 2010 qualified allocation plan for its low-income housing tax credit program.

(http://www.mass.gov/Ehed/docs/dhcd/hd/lihtc/2010qapamend7-13-10.pdf)

Connecticut Schedules Public Hearings on 2011 QAP

The Connecticut Housing Finance Authority will hold public hearings on its draft qualified allocation plan for its 2011 qualified application plan on August 11 (Bridgeport), 18 (Norwich), and 26 (Rocky Hill). Written comments will be accepted through September 8.

(http://www.chfa.org)

Montana Releases Final Draft 2011 QAP

The Montana Board of Housing recently released its final draft 2011 qualified allocation plan for its low-income housing tax credit program. The agency is accepting written comments by August 5 and in person at its board meeting on August 9.

(http://housing.mt.gov/Includes/BOH/Multifamily/2011_QAP_DRAFT_FINAL.pdf)

Colorado Solicits Applications for Weatherization Funds

The Colorado Governor's Energy Office is soliciting applications from owners of qualified multifamily rental housing properties for federal Weatherization Assistance Program funds. The application deadline is August 13.

(http://www.energyoutreachcolorado.org/geo_overview)

North Carolina Affordable Housing Conference Planned

The North Carolina Housing Finance Agency will hold it 2010 Affordable Housing Conference on September 16-17 in Raleigh.

(http://www.nchousingconference.com)

California Panel Approves Bill to Create New Markets Credit

On June 23, California's Senate Revenue and Tax Committee approved a bill (S.B. 1316) that would create a state new markets tax credit that could be claimed for qualified investments made in 2011. The tax credit could be claimed for investments to develop schools, small businesses, and real estate projects in low-income communities in California, and be used to offset state personal income taxes or corporate taxes. The measure is in the Senate Appropriations Committee.

(http://www.leginfo.ca.gov) TCA

Capital Briefs

HUD Revises FHA Multifamily Underwriting Standards, Policies

The U.S. Department of Housing and Urban Development (HUD) has issued a new mortgagee letter (2010-21) making significant changes to underwriting standards, policies, and procedures for Federal Housing Administration multifamily mortgage insurance programs, including Sections 221(d)(4), 221(d)(3), 223(a)(7), and 223(f). For most programs, the letter, among other things, increases minimum debt service coverage ratios and reduces maximum loan value/cost ratios, both for market-rate and affordable projects. The guidance also requires new project concept meetings with HUD for new projects under all programs other than 223(f). It establishes a two-stage processing system for market-rate projects; one stage for affordable projects. The changes are effective 60 days from July 6 for new pre-applications; later for pending proposals.

(http://fhadirect.hud.gov/offices/adm/hudclips/letters/mortgagee/files/10-21ml.pdf)

HUD Releases Guidelines for Subsidy Layering Reviews

HUD has published new administrative guidelines for housing credit agencies to follow in conducting subsidy layering reviews for proposed new multifamily construction or rehabilitation projects that will combine HUD Section 8 project-based voucher assistance with other government assistance. The guidelines, published July 9, implement provisions of the Housing and Economic Recovery Act of 2008.

(http://edocket.access.gpo.gov/2010/pdf/2010-16827.pdf)

IRS Solicits Comments on LIHTC Regulations

The Internal Revenue Service, while proposing no changes, is soliciting public comments by September 7 on the following current final regulations for the federal low-income housing tax credit program: Procedure for Monitoring Compliance with Low-Income Housing Credit Requirements (TD 8430); Rules to Carry Out the Purposes of Section 42 and for Correcting Administrative Errors and Omissions (TD- 8521); and Compliance Monitoring and Miscellaneous Issues Relating to the Low-Income Housing Credit (TD 8859).

(http://www.gpo.gov/fdsys/pkg/FR-2010-07-06/pdf/2010-16231.pdf)

Regulators Propose Changes to CRA

Federal banking regulators have proposed changes to Community Reinvestment Act regulations to revise the term "community development" to give favorable CRA consideration to financial institutions for loans, investments, and services for projects or activities in designated target areas under Neighborhood Stabilization Program.

(http://edocket.access.gpo.gov/2010/pdf/2010-15119.pdf)

HUD Announces Availability of Sustainable Planning Grants

HUD has announced the availability of $68 million in competitive grants under the Sustainable Communities Regional Planning Grant program. The grants are to support metropolitan and multijurisdictional planning efforts that integrate housing, land use, economic and workforce development, transportation, and infrastructure investments in ways that empower jurisdictions to consider the interdependent challenges of: economic competitiveness and revitalization; social equity, inclusion, and access to opportunity; energy use and climate change; and public health and environmental impact.

(http://edocket.access.gpo.gov/2010/pdf/2010-15717.pdf)

HUD Establishes NSP 'First Look' Process

HUD has established a temporary new "first look" sales process that will give certain entities first preference to acquire FHA REO properties under the Neighborhood Stabilization Program.

(http://edocket.access.gpo.gov/2010/pdf/2010-17335.pdf) TCA

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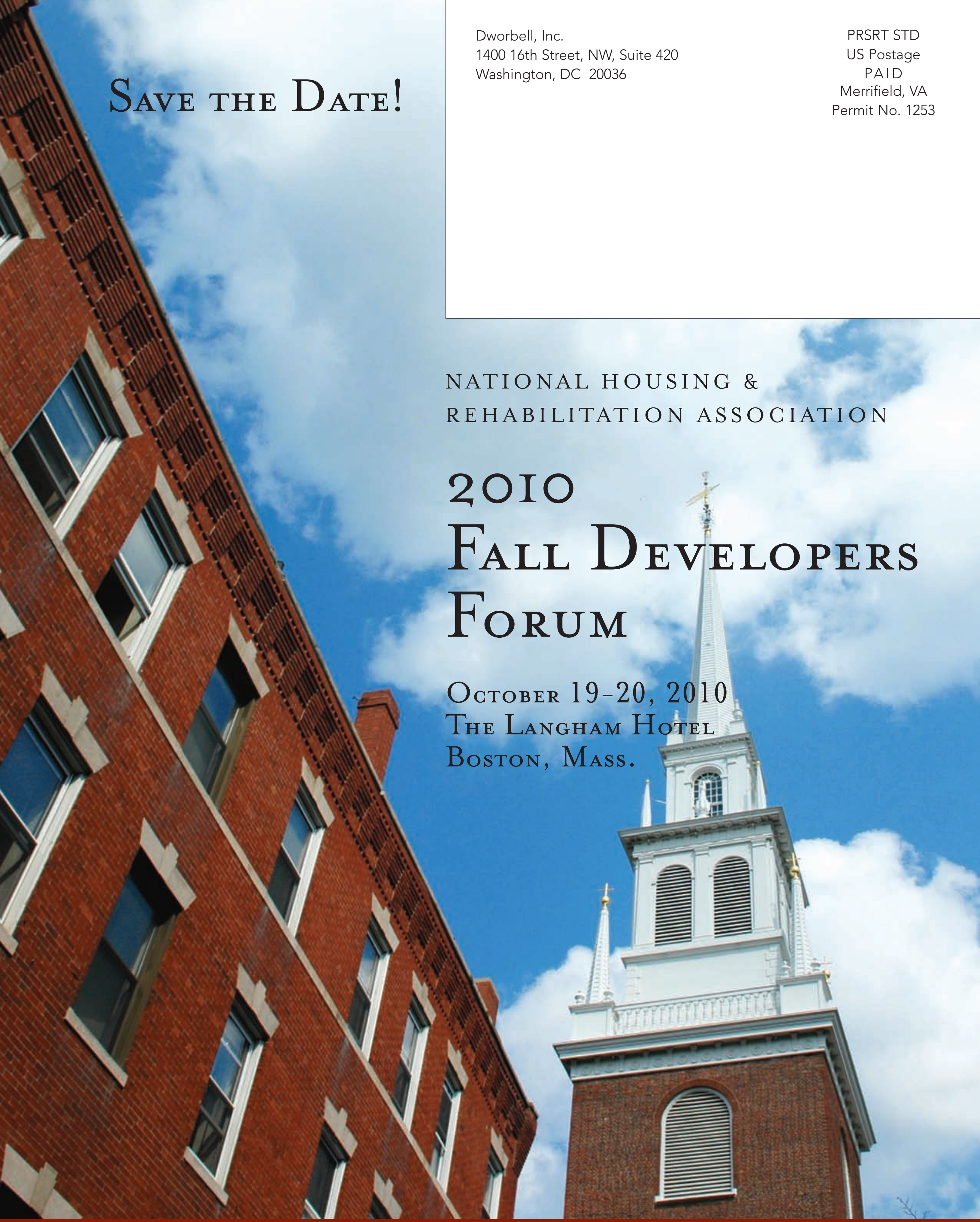

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