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Tax Credit Advisor

PUBLISHED IN ASSOCIATION WITH THE NATIONAL HOUSING & REHABILITATION ASSOCIATION

Tax Credit Compliance & Your $

LIHTC Development in Puerto Rico

Housing Bills Advance a Tad

A New Beacon for Veterans in Milwaukee

Mapping a Future for the Government Sponsored Enterprises

The rhetoric over the future of Fannie Mae and Freddie Mac has heated up substantially in recent months. Since the GSEs were placed into separate conservatorships in the fall of 2008, Congress and the Bush/Obama Administrations have been under heavy pressure to reform, consolidate, or even abolish the mortgage giants.

With the enactment of the financial regulatory reform act now behind, Congress and the Obama Administration are poised to begin the heavy lifting to reinvent our nation's mortgage finance system. The implications of what is eventually passed will be far reaching, including for multifamily finance and the affordable housing industry.

Thom Amdur

Where Are The Proposals?

The U.S. Department of Housing and Urban Development and the U.S. Treasury Department have solicited public suggestions about the future housing finance system since the spring, and collected comments. On August 17 in Washington, the departments hosted a high-profile "Conference on the Future of Housing Finance." In his opening remarks, Treasury Secretary Timothy Geithner identified the following key issues:

1. What role should the federal government play to provide stability to the housing finance system?
2. How should the housing finance system be structured to improve access to affordable housing?
3. How do we insure that the securitization market works efficiently while managing risk?
4. How do we transition to a new private-sector mortgage finance system that still provides consumers with access to reasonable rates?

During the day's discussion, a number of ideas and concepts seemed to float to the top, many of which would directly impact how affordable housing developers do business in the future. These included that:

1. The federal government cannot remain the dominant player in the mortgage finance system.
2. It is unlikely that the GSEs will not exist in their current form.
3. Securitization of mortgages will continue no matter what the future holds for the GSEs.
4. The federal government will need some mechanism to explicitly guarantee mortgage-backed securities.
5. The federal government will not be in a first loss position when guaranteeing mortgage-backed securities.
6. If a government agency/GSE provides the mechanism for guaranteeing mortgage-backed securities, it should not also hold the securities.
7. The future system must preserve the success that the GSEs have had with their multifamily affordable portfolios and help secure and preserve affordable rental housing.
8. The new system must balance home ownership and rental housing and address current inequities.
9. Sole reliance on current federal spending programs will not secure the nation's future affordable housing needs.

What's Next?

Treasury Secretary Geithner has promised to deliver a reform proposal to Congress by January 2011. House Financial Services Chairman Barney Frank (D-Mass.) plans to release draft legislation in September. In addition, another House panel plans hearings on Fannie Mae and Freddie Mac in September. All of these events will set the stage for future legislative action.

Although nothing will be finalized by the end of this year, these events provide an opportunity for the affordable housing community to participate in the GSE and housing finance reform dialogue and help shape the final product. Don't sit on the sidelines. Please contact me with your thoughts or recommendations regarding our future housing finance system, at 202-939-1753, tamdur@housingonline.com.

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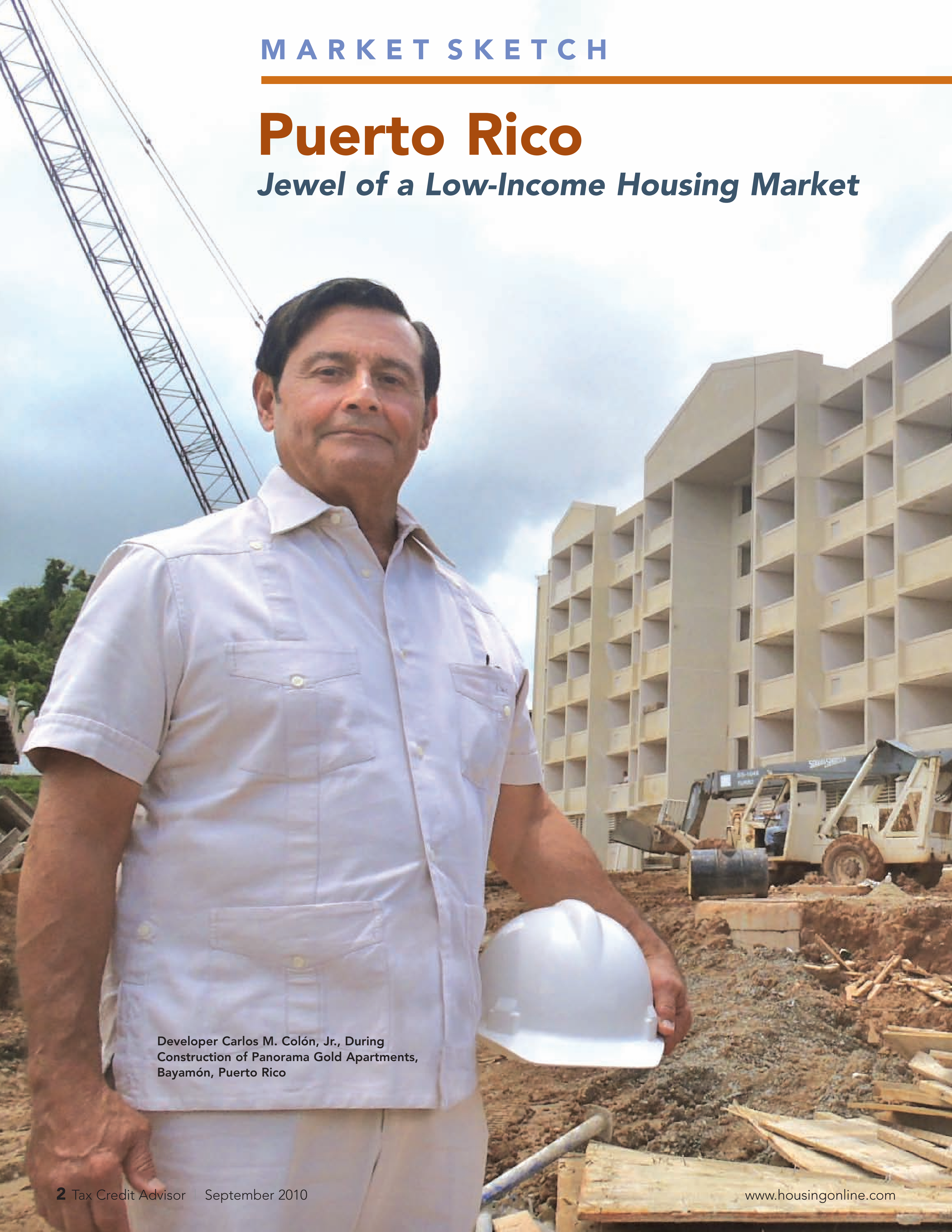
Puerto Rico

Jewel of a Low-Income Housing Market



Developer Carlos M. Colón, Jr., During Construction of Panorama Gold Apartments, Bayamón, Puerto Rico

For most Americans, Puerto Rico conjures up images of glorious white beaches and clear seas. But, in fact, the island has a significant low-income population that creates consistent robust demand for completed low-income housing tax credit units.

"The demand far exceeds the supply," says George Joyner, executive director of the Puerto Rico Housing Finance Authority (PRHFA), which allocates 9% housing credits, issues bonds, makes loans, and manages the federal HOME program."There are no empty projects; all the projects are fully occupied – 90-plus percent occupancy rates with waiting lists."

Developing LIHTC projects in Puerto Rico can be a challenge because of special circumstances. But there are advantages as well, providing attractive investment opportunities for syndicators and equity investors, say participants.

David Salzman, of The Richman Group, Greenwich, Conn., a long-time syndicator of tax credit projects in Puerto Rico, attests to the strong renter demand for tax credit units on the island, as does San Juan-based LIHTC developer Carlos M. Colón, Jr. Colón, joined by his son, Carlos M. Colón McFarland, and Engineer Ricardo Solá, has completed five LIHTC projects since 1995 and is building a sixth – all 9% deals.

"We started with an 80-unit [family] project in the municipality of Loiza, which is adjacent to San Juan and part of the metropolitan area," says Colón. "We added 24 more units in a second project at the same site. And then we built a 120-unit project for the elderly adjacent to those two. Then we did an 88-unit [elderly] project in Caguas, a bedroom municipality of San Juan. Then we went on to build an 88-unit elderly complex in the town of Cabo Rojo," in the southwest part of the island.

"Right now," he continues, "we're building a 168-unit family project in the town of Bayamón."

Colón has syndicated all of his tax credit projects with The Richman Group, which has invested in LIHTC projects in Puerto Rico since 1987. Richman's portfolio is about 3,000 units, mostly 9% deals, spread throughout the island in projects of different sizes. "We've done some very small ones; we've done some very large ones," says Salzman.

Differences from the Mainland

Tax credit development in Puerto Rico differs from the Mainland U.S. in several respects:

First, all projects are constructed of hurricane-resistant reinforced concrete.

In addition, development costs are generally higher because of higher land costs in many cases, the potential for high site work expenses because of the varied topography on the island, and the need to import certain building materials (e.g., steel). Another factor in some areas is lack of infrastructure (e.g., roads, accessibility, utilities). Finally, permitting can take longer (a new law implemented starting January 2011 will expedite the process), and there can be language issues.

On the other hand, in addition to strong renter demand throughout the island, other pluses are plenty of workers skilled in concrete construction, experienced LIHTC developers and property managers, full property tax exemption for affordable housing projects, and the fact that the entire island is a designated high-cost area that provides a 30% boost in the housing credit amount. Also, maintenance costs are lower. "The buildings generally when you walk through them are very cool," says Salzman. "They don't need to be heated; they don't need to be air conditioned."

Financing Challenges

Pulling together the financing for an LIHTC deal in Puerto Rico can be a challenge.

Much of this is due to the low average resident income for the island, which depresses tenant income and unit rent limits for LIHTC projects. According to Joyner, the rent limit for a three-bedroom tax credit unit occupied by a five-person household at 60% of the area median is only about $550 per month. As a result, he said, hard debt can generally support no more than 10% of the total development cost of a typical LIHTC project. Projects are typically funded 90-100 percent by

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Puerto Rico, continued from page 3

a combination of subsidies, such as housing credits, grants of federal HOME funds, and local incentives.

Rent subsidies are necessary for nearly all projects, either federal Section 8 or the local version under "Law 173." Colón, though, said while project-based rent subsidies are available for 100% of the units in high-rise multifamily elderly projects, the maximum for high-rise multifamily projects for families is 25%.

Securing tax credit equity, in sufficient amounts, can be a challenge as well, especially since the downturn in the LIHTC equity market.

"In the good days, before the market collapse, we had quite a few investors and syndicators participating in Puerto Rico, mainly Fannie Mae, Freddie Mac, and several other big investors," says Colón. "But with the collapse, it dried up." Joyner said there are now only a few syndicators still active in Puerto Rico, including The Richman Group. Active syndicators and equity investors are all based in the Mainland U.S.; none are from Puerto Rico.

The market downturn also caused a tumble in credit pricing for Puerto Rico deals. "Before the market collapse we were getting 90 cents on the dollar for tax credits," says Joyner. He says pricing plunged to as low as the 50s, but has improved, although it is still below 70 cents.

Salzman indicated that the relative absence of demand by Community Reinvestment Act-motivated investors has made it necessary to offer higher yields on LIHTC investments in Puerto Rico projects to attract equity investors. Keys to Richman's success in LIHTC investments in Puerto Rico have been investing in projects with project-based rent subsidies for all units, and selecting the right people to work with, such as experienced, proven local developers who can move projects along. With few exceptions, LIHTC projects in Puerto Rico are sponsored by developers from the island.

Richman has continued investing in LIHTC projects in Puerto Rico during the LIHTC market downturn, and is busy today. "We are closing deals there as we speak, and we look forward to doing many more syndications in Puerto Rico," says Salzman.

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Puerto Rico, continued from page 4

Some $192 million in federal stimulus funds received by PRHFA – from the Tax Credit Assistance Program and Section 1602 exchange program – have made it possible to generate viable new LIHTC projects in spite of the downturn.

PRHFA awarded these dollars – along with housing credits, HOME grants, and other subsidies – in two funding rounds in 2009, for 22 projects containing 2,448 units with total development costs of $454 million. "We basically crammed into one year what we would have probably otherwise done in three," says Joyner. Colón received TCAP funds for his current, nearly $27 million project in Bayamón, which will be completed in 2011. Other funding sources include tax credits, HOME funds, and interim and permanent loans from the Government Development Bank. All 168 units will have project-based vouchers.

PRHFA, which has an annual 9% per capita credit volume cap of $2.43 million, plans its next funding round in December.

Joyner and Colón say that LIHTC projects in Puerto Rico offer an attractive investment opportunity for other would-be equity providers. Joyner said he's not aware of any default on an LIHTC project in Puerto Rico, and there is a healthy pool of experienced LIHTC developers and managers. TCA

A Legislative Mix

Congress Advances Housing Bills, Punts on Extenders

Congress returns from recess in mid-September, after having advanced some housing bills in recent weeks but failing to enact critical "extenders" provisions, including those to continue the new markets tax credit program and low-income housing tax credit Section 1602 exchange program.

The extender provisions were sidelined when the U.S. Senate, before leaving for recess, dropped them from the original extenders bill (H.R. 4713), which Congress sent to the president with only an extension of unemployment benefits. When Congress returns, tax credit advocates will renew their efforts to get Congress to approve the key extenders provisions as part of another tax or jobs bill. Other extenders provisions that have been stranded include those to extend the placed-in-service deadline for GO Zone housing credit projects and for GO Zone projects receiving higher historic tax credit rates.

Lawmakers face a time crunch to pass legislation. Congress will be in session for just a few weeks before breaking for fall campaigning, and it isn't clear whether it will return after the November 2 elections for a lame-duck session. Any bills not passed by adjournment must be re-introduced next year.

Preservation Bill

On July 27-28, the House Financial Services Committee approved affordable housing preservation, public housing revitalization, and fair housing bills.

The preservation bill (H.R. 4868) is designed – by authorizing new funds and incentives – to stem the loss of federally-assisted or subsidized, privately owned multifamily rental housing units and prevent the displacement of low-income tenants.

Officials of the National Housing Trust hailed the panel's passage of the bill. "It's a big step forward," said NHT Executive Director Michael Bodaken. Toby Halliday, NHT Vice President, Public Policy, said the measure "includes a number of provisions that would make it easier to preserve existing [HUD] Section 8 housing and to help preserve [HUD] Section 202 elderly housing and [RHS] Section 515 rural housing."

Halliday was particularly pleased about provisions to facilitate the preservation, for long-term affordable rental use, of units without rental assistance in properties with expiring HUD subsidized mortgages, and the ability to project-base rental assistance or provide enhanced vouchers for these units to protect the current tenants.

The bill would:

- Provide resources and incentives to prevent the further loss of affordable housing units.
- Provide grants and loans to for-profit and nonprofit housing sponsors to recapitalize properties and maintain affordability.
- Allow owners to request project-based rental assistance instead of enhanced vouchers, and to receive budget-based rent increases.
- Establish a new, voluntary Preservation Exchange Program to encourage owners to sell properties to purchasers who will keep them affordable.
- Authorize state housing finance agencies, if they wish, to obtain a first right of refusal to purchase properties from selling owners. Owners, though, would not be forced to sell nor be prevented from obtaining a fair market sales price.
- Provide tools to recapitalize projects, enhance tenant protections, and establish tenant advance notification requirements for Section 202 projects.
- Preserve rural rental housing financed or assisted by the USDA's Rural Housing Service, including by making permanent the revitalization demonstration program for Section 515 properties and by authorizing 20-year Section 521 rental assistance contracts.
- Direct HUD and RHS to establish a national public database of HUD- and RHS-assisted properties.

Public Housing, Choice Neighborhoods

The Committee also passed a bill (H.R. 5814) designed to preserve and revitalize the nation's public housing stock. It would:

- Establish the Choice Neighborhoods Initiative, a new HUD program. Choice Neighborhoods would

Legislation, continued on page 8

Legislation, continued from page 6

provide grants to help local governments, public housing authorities, nonprofits, and other qualified entities preserve affordable housing and revitalize neighborhoods.

- Generally require "one-for-one" replacement of demolished or disposed public housing units.
- Provide PHAs with financial tools to rehabilitate and rebuild public housing properties.

Other Bills

The Committee approved a fair housing bill (H.R. 476) that would authorize HUD grants to pay for housing discrimination testing and for studies on housing discrimination, including against veterans and military personnel.

Meanwhile, Congress passed, and President Obama signed on August 11, a bill (H.R. 5872) providing HUD with an extra $5 billion in commitment authority for the FHA insurance fund that insures mortgages for multi-family housing projects.

Comparison of Enacted FY 2010, Approved FY 2011 Appropriations (in millions)

HUD Programs	FY 2010 Enacted	FY 2011 House-Approved
Tenant Based Rental Assistance	$18,184	$19,396
Project-Based Rental Assistance	$8,552	$9,376
Public Housing Capital Fund	$2,500	$2,500
Public Housing Operating Fund	$4,775	$4,829
HOPE VI	$125	$200
Choice Neighborhoods Initiative	$65	$0
HOME Investment Partnerships	$1,825	$1,825
Community Development Block Grants	$3,990	$3,998
Affordable Housing Trust Fund	$0	$0
Native American Housing Block Grants	$700	$700
Housing Opportunities for Persons with AIDS	$335	$350
Homeless Assistance Grants	$1,865	$2,200
Housing for the Elderly (Sect. 202)	$825	$825
Housing for Persons With Disabilities (Sect. 811)	$300	$300
HUD Total Budget Authority	**$46,924**	**$46,600**

USDA Rural Housing Service Programs	FY 2010 Enacted	FY 2011 – Senate Appropriations Committee-Approved
Section 515 Rural Rental Direct Loans	$69.5	$69.5
Section 538 Guaranteed Rural Rental Loans	$129.1	$129.1
Section 521 Rural Rental Assistance	$980.0	$971.6
Section 514 Farm Labor Housing Loans	$27.3	$27.2
Section 516 Farm Labor Housing Grants	$9.9	$9.9
Section 542 Rural Housing Vouchers	$16.4	$16.4

Appropriation Bills

On July 29, the House approved an appropriations bill (H.R. 5850) for the fiscal year that begins October 1 (FY 2011) that would provide HUD with $46.6 billion in total budget authority. Earlier, the Senate Appropriations Committee approved its own version (S. 3644), sending it to the full Senate.

H.R. 5850 would increase funding over FY 2010 for HUD tenant-based and project-based rental assistance, public housing operating subsidies, and homeless assistance grants. The same funding levels would be provided for public housing capital grants, the HOME program, and the Section 202 and 811 supportive housing programs. The bill would provide an additional $200 million for the HOPE VI program.

On July 15, the Senate Appropriations Committee approved the FY 2011 agriculture appropriations bill (S. 3606). It would provide the same funding level as in FY 2010 for the RHS Section 515 rural rental housing direct loan program, Section 538 rural rental guaranteed loan program, rural housing vouchers, and farm labor housing loans and grants.

(To view bills, go to http://thomas.loc.gov) TCA

In Brief

WNC Closes $153 Million Multi-Investor Fund

WNC & Associates, Inc., of Irvine, Calif., has closed a $153 million multi-investor low-income housing tax credit fund, WNC Institutional Tax Credit Fund 32, L.P. Corp 32, WNC's 50th fund, is acquiring 24 properties in 13 states throughout the U.S. The projects, which will have more than 1,800 units, are located in Alaska, California, Colorado, Hawaii, Illinois, Indiana, Iowa, Massachusetts, Minnesota, North Dakota, New York, South Carolina, and Wisconsin.

RedStone Establishes $250 Million Tax-Exempt Bond Fund

New York City-based Red Stone Partners has launched a $250 million investment fund to acquire fixed-rate tax-exempt multifamily housing bonds, and closed more than $50 million through their direct bond purchase structure. The fund was established to purchase new tax-exempt bonds issued to finance the acquisition and rehabilitation of affordable multifamily housing projects, and the purchase and restructure of existing tax-exempt bonds on stabilized properties. The program is available for bonds for 4% low-income housing tax credit properties, and for nonprofit/Section 501(c)(3) multifamily bonds.

RBC Closes National Tax Credit Fund

RBC Capital Markets' Tax Credit Equity Group has closed a new national low-income housing tax credit fund, RBC Tax Credit Equity National Fund 12, raising $107,574,914 in equity. The fund invested in properties in 15 states and the District of Columbia. RBC said the Fund 12 has six investors, including two new investor partners of which one is a first-time investor in low-income housing tax credits. TCA

Tax Credit Compliance

Out of Pocket

The Potential Co$t of LIHTC Noncompliance

By Erik Whitton, Spectrum Enterprises, Inc.

Erik Whitton

Making compliance mistakes in a federal low-income housing tax credit project can be costly for the developer or general partner. The result can be lost housing credits forcing a significant payment to your equity provider.

Under the LIHTC program, when an owner fails to maintain compliance in a tax credit project, the state allocating agency may file Form 8823 to report this noncompliance to the Internal Revenue Service. The IRS then may disallow or recapture credits. But even without an 8823 filing, many partnership agreements require the general partner, through an adjuster penalty, to pay the syndicator or equity investor for units deemed at risk for credit loss.

Many owners, developers, and even property managers may not be aware of the potential dollar costs from noncompliance incidents. The hypothetical examples below show the possible financial costs of these mistakes.

To lay the groundwork, a restatement of basic program rules is in order. First, the tax credit period for an LIHTC building – the period during which the owner (i.e. investor) claims the housing credit annually – is 10 taxable years, beginning with (1) the year that the building is placed in service or (2) the succeeding taxable year (the owner chooses which).

While the tax credit is normally claimed over 10 years, the building must remain in compliance with LIHTC program rules for 15 years, beginning with the first taxable year of the credit period.

One-third of the tax credits claimed in years 1-10 are referred to as the *accelerated* portion, inasmuch as they are generally fully claimed before the compliance requirement ends. Therefore, it is important to think of the tax credits in terms of thirds.

Situation 1: Noncompliance in Year 1

ABC Apartments is an LIHTC property with 40 affordable units, constructed in 2007 and receiving $600,000 in tax credits annually. The owner chooses 2008 as the

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The Rental Application

A Key Element of LIHTC Compliance

A. J. Johnson

A solid tenant rental application is a key part of assuring that a low-income housing tax credit project fully complies with LIHTC program rules, so that the investors can receive the full amount of housing credits that they expect.

So what goes into a good application? In recent interviews, compliance experts A. J. Johnson, President of A. J. Johnson Consulting Services, Inc., Williamsburg, Va., and Andrew Bowden, CEO of Spectrum Enterprises, Inc., Cape Elizabeth, Me., gave advice.

First of all, says Johnson, "The application needs to be comprehensive." To collect all of the detailed information needed to determine whether an applicant is eligible and suitable to occupy a tax credit apartment, a longer, customized application is vital. The one that Spectrum has developed, for use by its clients, runs around eight pages, including checklists. A generic renter application form purchased at an office supply store won't do.

"A tax credit rental application is going to be a much more comprehensive document than an application would be for a conventional multifamily property," says Johnson.

Eligibility Questions

According to the pair, key areas that a good LIHTC application form will ask about are:

- **Income.** This means all current and anticipated sources of income for all members of the household, since the applicant household must not have total income exceeding the applicable LIHTC income limit. "We're going to look at all their incomes sources…from employment income to pensions, to income from people outside the household, recurring gifts – all potential sources of income that they could have," says Johnson. Spectrum's application has a lengthy checklist of many possible types of income sources to prompt applicants.

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first credit year. A family moves into a low-income unit, even though above the LIHTC income limit. The family occupies the unit from January 1, 2008 until February 15, 2009. The unit is then re-rented to an eligible household on April 1, 2009.

In this situation, if the unit had been in full compliance from the beginning, the total amount of tax credits claimed for this unit over 10 years would have been $150,000 (10 x $15,000[1]). However, since the unit was not rented to a low-income household in Year 1, the owner may not claim any credits for Year 1, and may only claim two-thirds of the regular credit amount (or $10,000 per year) spread out over the remainder of the compliance period (another 13 years, 9 months).

Because of this noncompliance, the total potential tax credit loss to the investor is $12,500. This amount is

Compliance, continued on page 16

[1] *This amount of credit ($15,000 per unit) is an accurate portrait based on 10 randomly selected LIHTC projects that I recently audited (all 9%, new construction), ranging from 16 to 136 units and located in multiple states.*

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- **Assets.** Assets can add income and affect eligibility. "We're going to focus on what kind of cash they have in hand," says Johnson, "checking accounts, bank accounts, investment accounts, retirement accounts, personal property held for investment purposes, assets they have disposed of in the last few years for less than fair market value."
- **Employment.** The name of the current employer(s) of the applicant(s), their wage or salary, how long they've worked there.
- **Living situation.** Where do they live now. Do they rent? If they currently own a house, what is it's value? What do they plan to do with it (e.g., sell, rent)?
- **Household composition.** How many people will occupy the unit? Additional questions to ask, says Bowden, are, "Have there been any changes in the last 12 months? Do you anticipate any changes in the next 12 months." Current pregnancy or marriage plans, for example, can cause change.
- **Student status.** Are one or more of the members of the applicant household currently full- or part-time students? Were they recently? Do they plan to be in the next year? Under the LIHTC program, with certain exceptions, households comprised entirely of full-time students are ineligible to occupy a tax credit unit.

Additional Questions, Process

In addition to the first set of questions, designed to gather information to determine if the applicant is a qualified low-income household, a second set is designed to ascertain whether the applicant is suitable to live in the development. This means questions about criminal background, credit history, etc.

Johnson also recommends screening for legal status in the country.

Applicants should also be asked to furnish relevant documentation that the owner or property manager can use to verify information provided or use to obtain third-party verifications.

Johnson and Bowden differ a bit regarding the

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the sum of (1) the lost tax credit for the unit for all of Year 1 ($10,000), and (2) the lost tax credit for January through March of Year 2 ($833.33 per month x 3 = $2,500).

In addition to the $12,500 in lost credits, there is also the lost time value of money to the investor, since the tax credits will be claimed over a period longer than 10 years (i.e., instead of $15,000/year for 10 years, $7,500 for Year 2 and $10,000/year for the following 13 years).

Situation 2: Noncompliance in Year 5

In Years 1-4 a unit is occupied by a qualified household and the full annual credit amount of $15,000 is claimed. On May 1, 2012 an ineligible family moves into the unit. The owner discovers the error and offers the family an incentive to vacate the unit. On February 1, 2013 the unit is re-rented to an eligible household.

If an ineligible household moves into an LIHTC property during Year 5, the owner loses credits from the month of move-in to the month that the unit becomes occupied by a qualified low-income household. In addi-

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Application, continued from page 14

completion of the application during the on-site application/interview process conducted by on-site staff.

"We recommend that the applicant fill out the form and then have the person in the office go down through it line-by-line after they've completed it," says Bowden.

Johnson, on the other hand, recommends that the on-site staff person fill out the application, asking the applicant each question and then recording the information provided, posing follow-up questions as necessary for clarification and completeness. "The interview process and the application process are intertwined."

According to Bowden and Johnson, there should be a response for each and every question on the application.

Finally, backup review is advised.

"Ideally, somebody else would look at the [completed] application before the certification is prepared," says Bowden. "But, at a minimum, once the entire file is pulled together – meaning the application, the certification, the verifications – you always want to have at least one other set of eyes to look at it." TCA

Compliance, continued from page 16

tion, the owner may lose the accelerated portion of the credit already claimed in Years 1-4. (Note: The IRS may decide not to recapture credits if the owner corrects a noncompliance event within a reasonable period after it is discovered or should have been discovered.)

In this situation, the amount of lost tax credits equals $11,250 – for eight months in 2012 and one month in 2013. In addition, the owner could face recapture of the accelerated portion of credits claimed in Years 1-4 [the maximum recapture exposure is $20,000 plus interest and possible penalties (see table)].

Situation 3: Noncompliance in Year 12

After the end of the 10-year tax credit period, a unit in ABC Apartments becomes occupied by an over-income family, from February 1, 2019 until February 1, 2020.

At this point, all of the tax credits have been claimed, but the 15-year compliance period has not ended. After Year 10, the maximum recapture exposure amount begins to decrease annually, according to a formula. In this situation, the amount of tax credit that can be recaptured is $40,000, plus interest and possible penalties (see table).

Lessons Learned

In addition to the possible economic damage to a general partner from noncompliance in LIHTC properties, the general partner will suffer from a tarnished reputation with equity providers.

The lesson from the preceding examples is that it is critical to have a property management company and on-site staff qualified in LIHTC compliance, and to send them for training at least once a year to refresh and update their skills and knowledge. In some cases, owners may also wish to utilize an outside tax credit compliance consultant and/or tax credit compliance software.

Knowing about the potential cost of noncompliance should assist owners is pursuing the appropriate course to make sure that their LIHTC property stays in compliance.

Erik Whitton is the Director of the Private Consulting Division at Spectrum Enterprises, Inc. He may be reached at 207-767-8000, ext. 210; eriklihtc@gmail.com; http://www.spectrumlihtc.com. The author thanks Charles Rhuda, of Novogradac & Company LLP, who assisted with this article. TCA

LIHTC Recapture Amount for Example Project

Compliance Period Year of Noncompliance	Tax Credits Received Earned	Tax Credits Earned	Maximum Tax Credit Exposure
Year 1	$15,000	$10,000	$5,000
Year 2	$15,000	$10,000	$10,000
Year 3	$15,000	$10,000	$15,000
Year 4	$15,000	$10,000	$20,000
Year 5	$15,000	$10,000	$25,000
Year 6	$15,000	$10,000	$30,000
Year 7	$15,000	$10,000	$35,000
Year 8	$15,000	$10,000	$40,000
Year 9	$15,000	$10,000	$45,000
Year 10	$15,000	$10,000	$50,000
Year 11		$10,000	$40,000
Year 12		$10,000	$30,000
Year 13		$10,000	$20,000
Year 14		$10,000	$10,000
Year 15		$10,000	$0
	$150,000	$150,000	

Agents or principals?

During August, NeighborWorks held an important symposium, *A New Era in Affordable Housing, Investing for Impact in Sustainable Communities.* On the panel for which I prepared the framing paper, *Investing in Housing as Infrastructure*, Dan Letendre, CDFI Lending and Investing Executive for Bank of America, asked a question: "Are non-profit low-income housing tax credit sponsors agents or principals?"

Before you answer "principal," as thought 99% of the audience, consider what each term means.

- An **agent** works for another, providing a professional service, for which the agent has particular expertise. The agent makes no independent strategic decisions but instead takes direction (as to goals and objectives) from its principal, who provides the capital that is at stake. The agent is paid a fee (fixed, incentive, or a mixture), which is normally an operating expense of the business and hence a general creditor. The agent has no equity at stake, with no economic upside and no downside (other than the ever-present risk of being fired either for cause or for caprice).

- A **principal** is an actor at risk, with the ultimate in general responsibility. The principal makes all critical decisions (possibly subject to consents or vetoes), and provides the capital that is at stake. Principals are usually not paid fees *per se* (any fees paid go to affiliates performing services as agents of the owner), <u>but</u> instead derive their economic return either from their own capital contributions or through a promotional or carried interest normally tied to the venture's ultimate profitability; hence amounts are subordinate to the business's debts and the principal is not a creditor. The principal has equity at stake – skin in the game – with substantial economic upside and downside, and normally a secured position with vested rights.

Real estate brokers, mortgage brokers, leasing agents, and property management agents are all clear-cut examples of agency relationships. But what about the LIHTC sponsor and general partner?

Equity at stake is minimal, as are economic returns.

David A. Smith

Cash flow, already thinly sliced by the underwriting, is usually pledged to a soft debt holder. Residuals are even more ethereal, being at least fifteen years off, and that prospect encumbered by the extended use agreement. Plus, although the general partner will often have a notional 90% of the residuals, the position is "in the money"only after repayment of very substantial soft debt, so that in practice nearly all the upside is pledged to those intermediate "social" lenders. Downside is voluntary: small entities with a handful of properties, or those not planning to develop more, are effectively invulnerable, whereas large and diversified entities have a portfolio reputation to protect. LIHTC sponsors thus have the vested position and control attributes consistent with being a principal, but the economics of being an agent.

The capital providers are equally schizophrenic. Debt and equity investors have the lack of control normally associated with an agency relationship, but the upside/downside of a principal. If something goes wrong with the property or the sponsor, it is they who have the big money at risk, risks they can mitigate only by working through or taking over from that undercapitalized agent-in-disguise, the sponsor.

This fundamental contradiction, inherent in the way we finance LIHTC properties, creates structural weaknesses in the system. Because we use project finance with multiple layers of soft debt, we reduce LIHTC developers from what could be a sponsorship role into an agency relationship on behalf a myriad of distant

Guru, continued on page 19

Guru, continued from page 18

masters: sponsors have no skin in the game because they have minimal equity, and minimal equity because their agency-based economics make it next to impossible for them to accumulate any. So they can naturally develop the behaviors of subsidy scavengers and fee opportunists, thinking not so much of how to build residual value in their properties, but how to identify the next activity that can be carved off into a service business and hence into an above-the-line fee stream.

For capital providers, the weakness in having a *de facto* agent occupying the role normally assigned to a principal should be manifest: the sponsors cannot be counted on to act in the investor's best interest. Incentives misaligned with control can mean sponsors rationally unwilling to pursue a promising opportunity because it might involve out-of-pocket costs; or declining to borrow money for energy-conservation measures since the work and downside is probably theirs, while the upside is somebody else's.

When a sponsor has to be cajoled to act or induced with newly minted fees, it's a dead giveaway that it is thinking like an agent, not a principal. Conversely, if sponsors were true economic principals, they would be incessantly trimming operating costs: squeezing out maximum cash flow; constantly motivated to create new financing or capital transactions; and approaching Year 15 with a burning hunger to create a residual-generating event. Even non-profit sponsors would, because capturing residual value would enable them to build equity for redeployment into their next property or program.

If all that were the case, equity investors wouldn't need an active asset manager – a genuine owner's representative, ever-vigilant and ever-innovative – because the role would be essentially defensive.

But many sponsors aren't, so all capital providers do.

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

NH&RA News

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

Massachusetts Housing Chief to Address NH&RA 2010 Fall Forum

Gregory Bialecki, Secretary of the Massachusetts Executive Office of Housing and Economic Development, will deliver the keynote address at the National Housing & Rehabilitation Association's 2010 Fall Developers Forum, to be held on October 18-19 in Boston. Bialecki is a member of the cabinet and chief housing and economic development advisor to Gov. Deval Patrick, overseeing 14 state agencies including the Massachusetts Department of Housing and Community Development.

The 2010 Fall Forum, always a popular event, will feature panel sessions on a variety of current issues, trends, and developments in the affordable housing field, including the low-income housing tax credit equity market, gap financing sources, mixed-income housing, energy retrofits and green housing, legislation and regulatory actions, and historic tax credits.

Other highlights will include NH&RA's presentation of its 2010 Affordable Housing Vision Award on October 18, and its 2010 "Timmy" Awards for Historic Preservation on October 19.

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 18-19, 2010
Boston, Mass.

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

Registration and conference details are available at http:///www.housingonline.com/events.aspx.

CEFAH Continues Efforts to Seek Weatherization Changes

Members of NH&RA's Council for Energy Friendly Affordable Housing continue their efforts to secure changes to make it easier to use federal Weatherization Assistance Program funds to retrofit and improve affordable multifamily rental housing projects, particularly to allow WAP funds to be provided by grantees as loans.

CEFAH will be meeting again with senior officials of the White Housing Domestic Policy Council and the U.S. Department of Energy, which runs the WAP program.

In other developments, CEFAH met recently at NH&RA's 2010 Summer Institute conference in California, and will be meeting at the upcoming NH&RA Fall Developers Forum in Boston.

Legislative Leadership Council to Meet

NH&RA's new Legislative Leadership Council will be meeting on September 28-29 in Washington, D.C. with top housing and policy officials of the Obama Administration, to discuss ways that federal housing and community development programs can be modified to make them work more effectively. Among the Administration officials expected at the meeting are Carol Galante, HUD Deputy Assistant Secretary for Multifamily Housing Programs, and Derek Douglas of the White House Domestic Policy Council and Special Assistant to the President for Urban Affairs.

The session is expected to be the first of a series of high-level policy discussions with Administration officials.

NH&RA members interested in joining the Legislative Leadership Committee should contact Thom Amdur, 202-939-1753, tamdur@housingonline.com.

Historic Council Engages in Multiple Actions

NH&RA's Historic Preservation Development Council is reviewing prior recommendations made several years

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ago to improve the federal historic rehabilitation program, particularly those relating to income-producing projects. Those recommendations, which NH&RA helped shape, were made to the Bush Administration through a specially created commission, but resulted in minimal changes. HPDC members will be exploring possible changes to the previous recommendations, and new recommendations, to submit them to the Obama Administration with the goal of obtaining improvements to the program. Those with suggestions should contact Thom Amdur, 202-939-1753, tamdur@housingonline.com.

In related news, NH&RA will be presenting the 2010 J. Timothy Anderson ("Timmy") Awards, to recognize outstanding projects utilizing federal historic tax credits, on October 19 at the Association's 2010 Fall Developers Forum in Boston. The conference will also feature discussion of historic tax credit topics.

New Markets Committee Exploring Possible Program Changes

Members of NH&RA's New Markets Tax Credit Steering Committee are developing a white paper to refocus on ways to try to get the federal new markets tax credit program extended, and potential legislative or regulatory changes to the program to improve it. Authorization for the NMTC program ended last December 31. Legislation to continue it is pending in Congress.

NCAHMA to Hold Conference, Nominate New Leaders

NH&RA's National Council of Affordable Housing Market Analysts (NCAHMA) has released the agenda for its 2010 Affordable Housing Underwriting Conference & Annual Meeting, which will be held on October 5-6 in Chicago. The meeting will bring together leading experts in the affordable housing industry to share the latest transactional, underwriting, legislative, and regulatory information, focusing on market study issues.

NCAHMA will also shortly be nominating a new slate of officers, to be effective starting at the October conference.

In other developments, NCAHMA will be meeting at the NH&RA Fall Developers Forum in Boston; is continuing to work on a white paper detailing recommendations for the scope of work in market studies for affordable housing projects; and has submitted comments to a number of state housing credit agencies on the market study requirements in their low-income housing tax credit qualified allocation plans. Comments have been submitted to the allocating agencies for Illinois, Michigan, Montana, New Hampshire, New Jersey, North Dakota, Ohio, and South Carolina. NCAHMA will be submitting comments to additional states in coming weeks. NCAHMA has prepared a matrix that shows the market study requirements in states' current QAPs, and how they compare to NCAHMA's recommended standards. 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. Pending.

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. 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. Passed by House Financial Services Committee.

H.R. 5814. Public housing preservation bill. Among other things, would authorize the new Choice Neighborhoods Initiative program proposed by Obama Administration. Passed by House Financial Services Committee.

H.R. 5850, S. 3644. FY 2011 HUD-Transportation appropriations bill. Passed by House, Senate Appropriations Committee.

S. 3606. FY 2011 appropriations bill for federal rural housing programs. Passed by Senate Appropriations Committee.

Transforming Rental Assistance: Proposed by Administration.

Milwaukee's Veterans Manor

Permanent Supportive Housing and Services for Veterans

Rendering of Veterans Manor, Milwaukee, Wisconsin
Rendering by Eppstein Uhen Architects

Retired U.S. Army Brigadier General Robert Cocroft is the kind of guy you don't say no to. As a result, he – and other public and private supporters – are bringing a new ray of hope to low-income military veterans in Milwaukee, including the disabled and formerly homeless.

This fresh beacon is Veterans Manor, a new low-income housing tax credit (LIHTC) development now under construction set for completion in April 2011. In addition to 52 one-bedroom apartments, the four-story development will include a computer lab, exercise room, café, and common spaces, and offer residents a variety of services. It's said it will be the first permanent supportive housing project for veterans in the city.

The $11.3 million Veterans Manor is being developed by the Center for Veterans Issues (CVI), a local nonprofit, and Cardinal Capital Management, Inc., a for-profit Milwaukee firm that will also manage the property.

CVI, begun by the National Association of Black Veterans, provides housing and services for veterans in Wisconsin, particularly homeless veterans. It operates four transitional housing facilities (two in Milwaukee) and a permanent supportive housing apartment building in Racine, and provides services for the residents.

Case Management One Service

"This housing is permanent housing," says Cocroft, of Veterans Manor. "That means we will have case management on site to assist veterans who may run into various issues or barriers, to [help them] work through those issues and barriers, so that they may be able to maintain the housing. Quite often, you can find affordable housing for individuals, but they're not able to maintain that housing because of things that come up in their lives. With case management there on site, we will be able to assist the veterans to stay there in the housing."

Robert Cocroft

Among the other services will be employment and veterans benefits assistance and transportation. CVI will

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Veterans Manor, continued from page 23

fund the services it directly provides from grants it receives.

Veterans Manor will also offer the next stop for graduates of CVI's transitional housing facilities, which generally limit residency to 24 months. "About 80 percent of the residents who work through the transitional program become employed," says Cocroft, "but many times the wage is in the nine to ten dollar an hour range, which makes it difficult to find a lot of affordable housing. Similarly, other individuals either receive VA disability or Social Security. Once again, affordable housing becomes a challenge with those monthly payments."

The roughly 650-square-foot apartments, limited to tenants making 60% or less of the area median income, will have initial monthly rents of $600 to $650, and contain a full kitchen, living room, full or partially handicapped accessible bathroom, and bedroom.

Though open to any qualified low-income household, the project will be geared – by its design and services – to veterans. "We have a waiting list of over 100 veterans who will be eligible for this housing," says Cocroft.

Prime Location

Veterans Manor will be in a prime location, at 35th Street and Wisconsin Avenue – the city's main thoroughfare. The site is near CVI's operations and the VA Medical Center.

Acquired from private owners, the site was once used for a car dealership but had been vacant 15 years. CVI secured strong support for the project from neighbors, Marquette University High School across the street, the city and county, and others. Milwaukee city and county have both provided significant funding for the project.

Photo by David LaHaye, Milwaukee Department of City Development

Richard Marcoux

"Too often we find that special needs residents, whether they're veterans or not…have not been given the attention they deserve and require," says Richard Marcoux, Commissioner of the City of Milwaukee Department of City Development. He said the city is a big supporter of Veterans Manor and of CVI. Veterans Manor, Marcoux notes, will be a place that veteran residents "can truly call home, and that respects their dignity, first and foremost as human beings, and also as veterans who served our country and deserve to be able to live out their life with that dignity and with a measure of thanks from the people that they served."

Milwaukee Mayor Tom Barrett and County Executive Scott Walker have a goal to build a thousand units of special needs housing over the next five to six years.

Funding Sources

Funding sources for Veterans Manor include federal low-income housing tax credits, federal Tax Credit Assistance Program (TCAP) funds, federal Community Development Block Grant dollars from the city and county, and housing trust funds from the city. JP Morgan and IFF, a loan consortium, are providing construction financing, while IFF will also provide a permanent mortgage. Thirty-five units will have project-based rent subsidies.

The Wisconsin Housing and Economic Development Authority allocated 9 percent housing credits for the project, and provided the TCAP funds as a loan.

Cocroft and Erich Schwenker, president of Cardinal Capital Management, Inc., said the LIHTC was essential to make Veterans Manor feasible. "Without the low-

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Veterans Manor, continued from page 25

income housing tax credits, there would have been significant issues with debt service," says Cocroft.


Erich Schwenker

Milwaukee-based Cardinal develops and manages special needs housing, working with nonprofits. Its prior experience in developing special needs LIHTC projects, and the fact that CVI had never developed a tax credit project before, prompted CVI to select the company to co-develop Veterans Manor. "We had built some housing for persons recovering from mental illness," says Schwenker. "And the people we did that were happy with it and recommended to the veterans that they discuss [their project] with us."

Tax Credit Equity

RBC Capital Markets' Tax Credit Equity Group syndicated the housing tax credits for the project, closing in May 2010 and supplying nearly $7 million in equity. In an unusual move for the times, RBC used its own capital to fund the deal, and then found a proprietary corporate investor for the investment.

"This is a very unique type of deal, and at the time that we were looking at it [in late 2009], the equity markets were still in disarray," said RBC Tax Credit Equity Group's Dan Kierce, who originated the LIHTC equity investment.

Kierce said RBC was attracted to Veterans Manor because of the residents it will serve, the experience and reputation of CVI in serving veterans, the solid track record of Cardinal Capital Management in developing and managing LIHTC special needs housing projects, and the broad local support for the development. There was also a personal connection. In late 2009, while in Milwaukee, Kierce met with Cocroft and Schwenker. "I'm a former Marine, and so the opportunity to sit down and talk about a deal that would be geared toward veterans was something that was different and, quite honestly, pretty cool…We at RBC felt compelled to make this transaction happen."


Dan Kierce

Bob Spangler, Managing Director, RBC Tax Credit Equity Group, said, "RBC Capital Markets is pleased to have played a key role in financing the equity investment for Veterans Manor. This project reflects the best of what public-private partnerships can do – innovative combination of housing and social services for our nation's veterans." TCA

Veterans Manor Source and Uses Summary

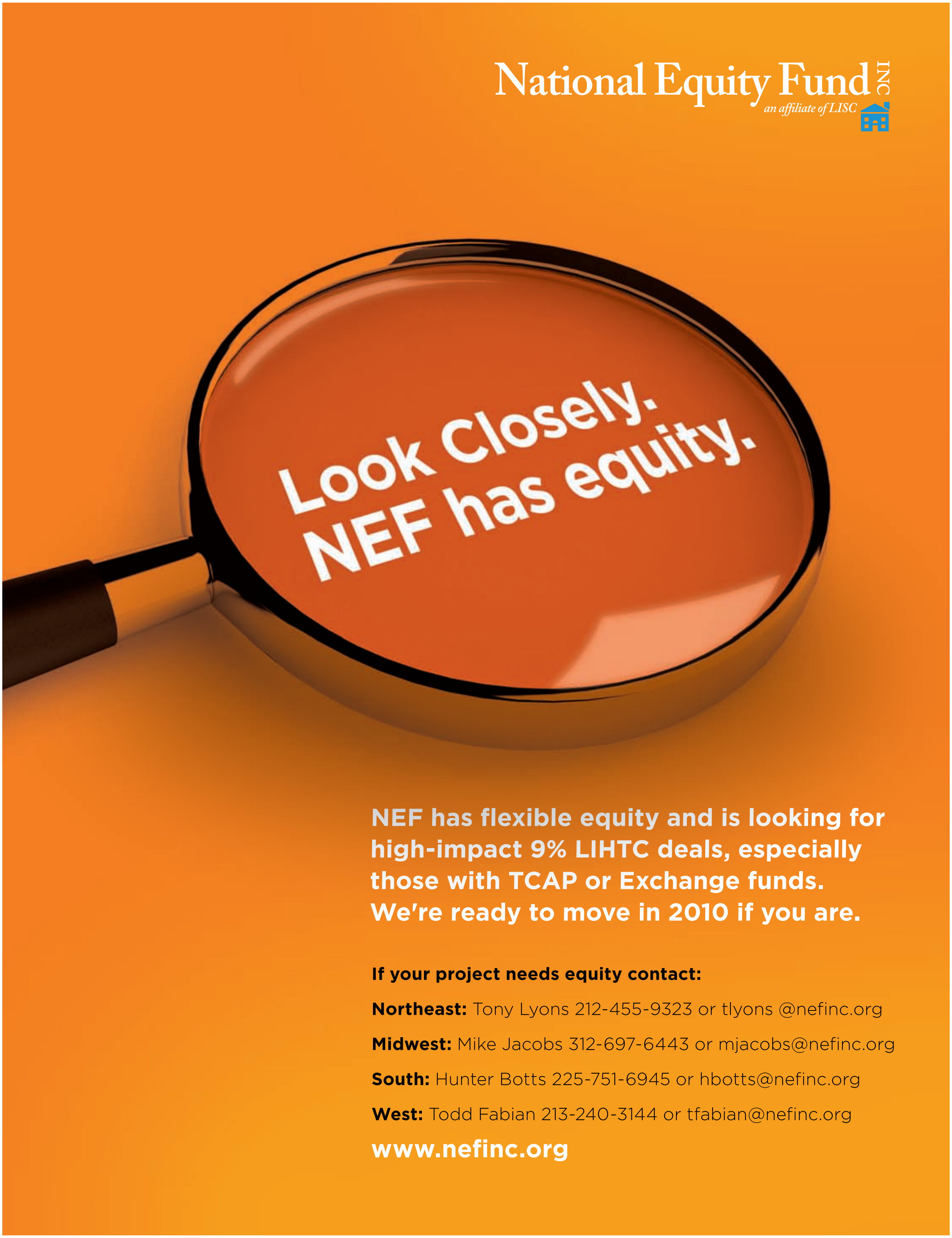
SOURCES	
Conventional first mortgage (7.125%, 18-year, term, 30-year amortization)	$1,500,000
TCAP Loan from WHEDA (30-year, 0%)	$1,760,474
Federal Low-Income Housing Tax Credit Equity – RBC Capital Markets Tax Credit Equity Group	$6,805,547
Milwaukee City – CDBG	$550,000
Milwaukee City – Housing Trust Fund	$168,000
Milwaukee County – CDBG	$418,888
Deferred Developer Fee	$115,243
Total Sources	**$11,318,152**
USES	
Acquisition Costs & Associated Fees	$1,136,888
Residential Development Costs	$7,685,311
Commercial Space	$526,189
Developer Fees	$986,236
Other Fees & Costs	$365,033
Reserves	$618,495
Total Development Cost	**$11,318,152**

HAFC = Housing Authority of Fulton County

Financial Reform Law Contains Housing Provisions

The financial regulatory reform act signed into law by President Obama on July 21 (P.L. 111-203) contains the following housing-related provisions:

- An additional $1 billion for the Neighborhood Stabilization Program operated by the U.S. Department of Housing and Urban Development, to provide grants to states and localities to help fund the acquisition and rehabilitation, for re-sale or rental, of foreclosed, vacant, and abandoned homes and other eligible properties in distressed neighborhoods.
- Requires the U.S. Department of Treasury to conduct a study on reforming the housing finance system.
- Extends the Protecting Tenants at Foreclosure Act (PTFA).
- Directs the establishment of a new Office of Housing Counseling within HUD, to enhance homeownership and rental housing counseling.
- Imposes stiffer requirements for mortgage-backed securities


National Equity Fund INC
an affiliate of LISC
Look Closely.
NEF has equity.
NEF has flexible equity and is looking for high-impact 9% LIHTC deals, especially those with TCAP or Exchange funds. We're ready to move in 2010 if you are.
If your project needs equity contact:
Northeast: Tony Lyons 212-455-9323 or tlyons @nefinc.org
Midwest: Mike Jacobs 312-697-6443 or mjacobs@nefinc.org
South: Hunter Botts 225-751-6945 or hbotts@nefinc.org
West: Todd Fabian 213-240-3144 or tfabian@nefinc.org
www.nefinc.org

New Spirit in St. Louis

Historic Hotel Revived by Salvation Army

The Railton, St. Louis, Missouri

In the late 1920s, the hotel business in downtown St. Louis near the Union Station was bustling. Ten majestic new hotels along Market Street catered to businessmen and other weary travelers arriving from the nearby train station.

One was the Robert E. Lee Hotel, designed by Kansas City architect Alonzo H. Gentry and completed in 1928 by the Robert E. Lee Hotel Company, a chain. Rising 14 stories, the Renaissance Revival style structure boasted interesting architectural details.

Today, after varied uses and a $14 million gut rehabilitation, the sole survivor of the 10 hotel buildings has been resurrected as affordable "workforce apartments" for low-income residents, including those laboring at service jobs nearby in the rejuvenated central business district.

The new development, called The Railton, was sponsored by the St. Louis-based Midland Division of the Salvation Army, a large international nonprofit organization which provides emergency disaster services and operates dozens of programs to help individuals gain or regain self-sufficiency. Funded entirely by equity generated by federal and state historic rehabilitation tax credits and low-income housing tax credits, the project was developed by the St. Louis Equity Fund and a consultant, on behalf of the Salvation Army.

Quick Lease-Up

The renovation of The Railton was completed in late 2009, and all apartments leased in two months. "There's great need for these affordable units in the downtown area," says Major Jim Curl, Divisional Secretary for Business at the Midland Division of the Salvation Army. "These units are state-of-the-art, very modern, and convenient for the downtown workers," he said.

The 91 one-bedroom and 13 two-bedroom apartments range from 416 to 611 square feet, have rents up to $375 per month, and are restricted to residents earning 60% or less of the area median income. The building has a computer lab, exercise room, and common spaces where the Salvation Army operates programs and services for residents (e.g., counseling, job placement assistance). The property is managed by McCormack Baron Ragan Management

Prior to the renovation, the Salvation Army owned

Railton, continued on page 29

Railton, continued from page 28

and operated the building as a 220-unit single-room occupancy (SRO) facility for low-income and homeless individuals. The SRO units were basically motel rooms. With the conversion to full-size apartments, the development can now accommodate couples and small families as well as individuals.

A Fit with Its Mission

The Railton "serves as a continuum of our whole service project," says Curl. "We take folks from the street, going through some treatment, some rehabilitation program, and allow them to get back on their feet through transitional living. This is probably the next step – independent living and moving back into the work force and the community."

A number of the former SRO residents are now tenants at The Railton.

The project had a total development cost of $18,991,830. The St. Louis Equity Fund (SLEF), a nonprofit tax credit syndicator, provided nearly $8 million in equity and purchased much of the tax credits. National City Bank [now part of PNC] provided the rest of the equity, making a "side-by-side" investment and purchasing the rest of the tax credits.

Pricing was 88 cents per dollar for the federal housing tax credit, 93 cents for the federal historic credit, and 38 cents for the state housing credit. SLEF, which made its equity commitment in June 2008, placed the investment in one of its multi-investor tax credit funds.

SLEF President & CEO John J. Wuest calls the new development "a great building. We were just thrilled about it." He said the Salvation Army had to be educated about the LIHTC. The Railton is the Army's first housing credit project in St. Louis, though the organization has done others around the country before.

Historic Preservation Design

Trivers Associates, Inc., a local architectural and interior design firm, designed the project. The historic rehabilitation plans had to be approved by the National Park Service, and the work completed in accordance with these plans, to receive federal historic tax credits. The Robert E. Lee Hotel building was listed on the National Register of Historic Places in early 2007.

Andrew Smith, an architect and principal of Trivers Associates, indicated that the building's history and architectural features made the project an interesting one.

The Robert E. Lee Hotel closed a few years after it opened in 1928 due to the Depression. In 1935, it became the Auditorium Hotel, and in 1939 was purchased for one dollar by the Salvation Army for use as one of its Evangeline residences, providing single rooms for unmarried women working downtown and for military wives whose husbands were deployed overseas. In 1974, the Army renamed the building the Railton Residence and opened it to male residents.

But over time, the building lost its sheen. In recent years, the Salvation Army had to decide what to do with it. "The existing facility was in pretty rundown shape," says Curl. They opted to renovate the building.

In addition to combining SRO units to create apartments, Trivers Associates' design made a number of changes to restore the building's historic appearance and improve its energy efficiency. The lobby's wood wainscot was restored and the decorative plaster cornice that ran around the lobby's perimeter, deteriorating and hidden for years by a drop ceiling, was molded and recast. Exterior flush-steel doors were replaced by new glass-light wood doors, and existing single-pane exterior windows replaced with new insulated aluminum windows. None of the building's original windows were left; all had been replaced by cheap single-pane wood windows 15 or 20 years ago. So old photographs were referenced to design a new, more energy-efficient replacement window that looked like the original.

"There were historic details that had been hidden below multiple layers of newer finishes," says Smith. "So not only were we replacing all the building systems, but we were removing all these furring areas and dropped ceilings to go back and try to expose as much of the original historic character as we could." In addition, "The old mechanical equipment was horribly inefficient. So by using new high-efficiency domestic water heaters and boilers and other modern high-efficiency equipment, we decreased the energy usage pretty significantly."

On the upper hallways, all of the existing doors were retained, even though the reduction to 104 units created an excess. The non-functional doors were distinguished from the unit entry doors – to satisfy the fire marshal – by removing the metal hardware from them.

(Details on the history and architectural features of the Robert E. Lee Hotel building can be found in the National Register registration form, at http://www.dnr.mo.gov/shpo/nps-nr/07000021.pdf) TCA

Advocates Ask Treasury for Changes in Wake of Related Party Test Revision

Key participants in the federal new markets tax credit and historic rehabilitation tax credit industries are asking the U.S. Treasury Department to revise certain NMTC program rules so that a positive recent development regarding the "related party test" can be utilized for the benefit of twinned new markets and historic tax credit transactions.

Several months ago, in written guidance accompanying the NMTC allocation application released for the 2010 funding round, the Community Development Financial Institution Fund changed the timing of the application of the related party test, which determines if a community development entity (CDE) is related to and controls the project or business (QALICB) to which it will provide funding (i.e. as equity and/or debt).

Tax credit advocates soon discovered, though, that the change is essentially meaningless because NMTC equity investors typically want to be assured that a CDE will be able to qualify for a safe harbor called the "reasonable expectations test," to minimize their tax credit recapture risk during the seven-year NMTC compliance period. The way to meet this safe harbor is to show the CDE, under Treasury regulations, will not be deemed to "control" the QALICB, through direct or indirect ownership of the QALICB – based on the value of its equity interests in the QALICB or through voting or management rights. Minimizing CDE voting or management rights is easy to draft into an LLC agreement. However, Treasury regulations do not define how to determine control based on the value of equity interests. Absence this guidance, it is not possible to get a legal opinion that a CDE that provides more than 50% of equity for a deal does not control the QALICB. In twinned HTC/NMTC transactions, the CDE is almost always providing more than one-half of the equity financing.

In separate letters to Treasury, the New Markets Tax Credit Working Group, coordinated by Novogradac & Company LLP, and the Historic Tax Credit Coalition, have requested certain specific changes to existing federal tax regulations so that NMTC and historic tax credit transactions can be structured to take advantage of the CDFI Fund's recent change pertaining to the related party test and not cause discomfort for equity investors. The largest NMTC investors have indicated that they will not purchase NMTC credits from a CDE that does not meet the reasonable expectations test.

John Leith-Tetrault, of the National Trust Community Investment Corporation, which syndicates new markets and historic tax credits, indicated that favorable changes to enable CDEs to provide more of their funding to a QALICB as equity and less as debt would make transactions stronger financially, reduce risks, make more deals feasible because of a lower debt load, and probably also reduce transaction costs because of simpler deal structures. TCA

(NMTC Working Group Letter: http://www.novoco.com/new_markets/resources/working_group.php)

State Roundup

Ohio Offers State New Markets Tax Credits

Ohio has launched its state new markets tax credit program and is soliciting applications by September 20 for $10 million in allocation authority in the first funding round. Awards will be announced on October 31. Like the federal program, Ohio's program provides a 39% tax credit over seven years for qualified investments in low-income community businesses. Only community development entities serving Ohio that have already received a federal NMTC allocation may apply.

(http://development.ohio.gov/urban/ONM/default.htm)

New York State Credit Deferral Legislation

New York Gov. David A. Paterson has signed legislation (A. 9710-C) needed to finalize the state budget that raises revenues by deferring tax expenditures under more than 30 state tax credit programs, including the state low-income housing, empire zone, and historic rehabilitation tax credits. State tax credits earned between January 1, 2010 and January 1, 2014 in excess of $2 million will be deferred until after 2013. Deferred credits will be claimed over 2014-2016. The act doesn't affect projects claiming less than $2 million in tax credits. The law also caps at $28 million the amount of state housing tax credits that can be allocated.

(http://assembly.state.ny.us/leg)

Illinois Governor Signs Housing Bills

On August 2, Illinois Gov. Pat Quinn signed legislation (H.R. 6038) extending the state's Affordable Housing Tax Credit program through 2016. The program provides a 50% state income tax credit for donations to qualified nonprofit affordable housing sponsors for affordable housing and employer-assisted housing.

(http://www.ihda.org/admin/Upload/Files//dca716b7-d12f-4dd6-8cbc-80935818f670.pdf)

Governor Signs Bill to Allow Refinancings

New York Gov. David A. Paterson has signed legislation that will allow the State of New York Mortgage Agency to insure loans that refinance overleveraged apartment buildings struggling to pay their debt service. The new law removes a prior requirement that refinancings of multifamily mortgages insured by SONYMA include renovation of the property. SONYMA will be able to insure refinanced mortgages of up to $150 million, for properties originally financed during 2004-2008.

Maryland Solicits Applications for Tax Credits

The Maryland Historical Trust is accepting applications for $10 million in state Sustainable Communities Rehabilitation Tax Credits. The new state tax credit expands the former heritage tax credit beyond renovations of only historic buildings, to broader areas of revitalization, including rehabs of commercial properties located in Main Street areas (and in future years, in target growth areas such as Transit-Oriented Development and Base Realignment and Closure Act zones). The new tax credit, available for income-producing properties, equals 20% of rehabilitation expenditures for certified historic structures, 25% for "certified historic structures" that are high-performance buildings (LEED Gold-certified or the equivalent), and 10% for non-historic qualified rehabilitated structures.

(http://www.mdp.state.md.us/PDF/Press/PressRelease_SustainableCommunitiesGrants_081610.pdf)

Capital Briefs

HUD Issues Final Rule Regarding Tax Credit Equity and FHA Loans

The U.S. Department of Housing and Urban Development has published a final rule that bars HUD from requiring the escrow of syndication proceeds from the sale of federal low-income housing, historic rehabilitation, and new markets tax credits at the time of initial endorsement for an FHA-insured multifamily mortgage. The regulation implements a provision of the Housing and Economic Recovery Act of 2008.

(http://edocket.access.gpo.gov/2010/pdf/2010-20630.pdf)

HUD Publishes Proposed Fair Market Rents for FY 2011

HUD is soliciting comments by September 3 on proposed Fair Market Rents (FMRs) for the fiscal year (FY 2011) beginning October 1. FMRs are used to determine payment standard amounts for HUD's Housing Choice Voucher program, initial renewal rents for some expiring project-based Section 8 contracts, and initial rents for Housing Assistance Payment contracts in HUD's Moderate Rehabilitation SRO program.

(http://edocket.access.gpo.gov/2010/pdf/2010-19084.pdf)

IRS Seeks Comments on Recertification Waiver Form

The Internal Revenue Service is soliciting comments by October 12 on Form 8877, Request for Annual Income Recertification Requirement for the Low-Income Housing Credit. No changes are proposed.

(http://edocket.access.gpo.gov/2010/pdf/2010-19875.pdf)

HUD Announces NOFA for Veterans Homelessness Demo

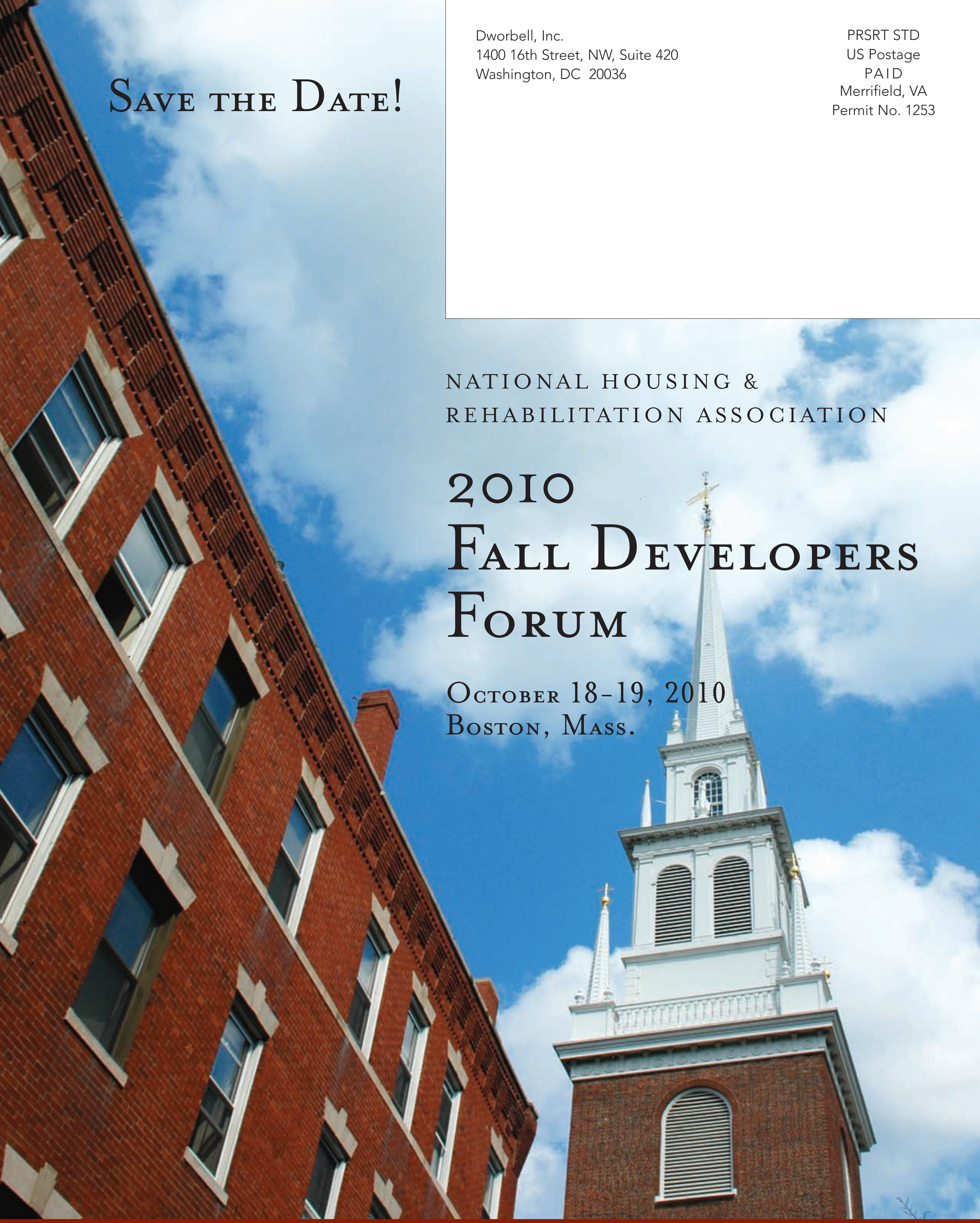
HUD has announced the availability of $10 million in competitive funding under the Veterans Homelessness Prevention Demonstration Program. Under this, HUD will work with other federal departments to coordinate the selection of a limited number of urban and rural sites that promote early intervention.

(http://edocket.access.gpo.gov/2010/pdf/2010-18420.pdf)

Livable Communities Act Approved by Senate Panel

On August 3, the Senate Banking Committee passed the Livable Communities Act (S. 1619), which would improve the coordination of federal policies pertaining to housing, community development, energy, transportation, and the environment. It would also authorize HUD's new Office of Sustainable Housing and Communities, and establish an interagency working group. A similar bill (H.R. 4690) is pending in the House.

(http://thomas.loc.gov)



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