December 2010 | Volume XXII No. 12

Tax Credit Advisor

PUBLISHED IN ASSOCIATION WITH THE NATIONAL HOUSING & REHABILITATION ASSOCIATION

The Different Looks of Mixed-Income Housing

PAGE 12

Housing After the Landslide

PAGE 2

FHA to Launch Tax Credit Pilot

PAGE 8

Old Cigar Factory Gets a Makeover

PAGE 33

Sakura Crossing, Los Angeles, California
Developed by Related California
Photo by Scott Francis

Opportunity With the New Majority

Thom Amdur

As President Obama has noted, the Democrats in Congress took a "shellacking" in the mid-term elections. This winter there will be more than 100 new U.S. Representatives and Senators – the largest class of freshman legislators in a generation. Many of our long-time supporters will not be returning in the new Congress or will have a diminished role in the minority.

While divided government does not have to mean legislative stalemate, it's hard to imagine after the election results and subsequent rhetoric that the new Congress will be very productive. It is also difficult to imagine a major retrenchment of discretionary programs, even with a new class of conservative, anti-"big government" freshmen legislators.

However, there will be a great deal of debate on major issues that could impact how housing is delivered and financed in the future. It is paramount that the affordable housing community marshal our forces and educate freshmen members of Congress about the benefits of key programs like the low-income housing tax credit, historic tax credit, and new markets tax credit.

This is an opportunity to train the next generation of affordable housing advocates and defend our turf. For many newly elected conservatives, the concept of government intervention in the realm of affordable housing and community development will not be an ideological fit.

The stakes for the affordable housing and historic rehab community could not be higher. Congress is inching toward fundamental reform of the housing finance system. Treasury Secretary Geithner will present a proposal to reform the government-sponsored enterprises in January and several prominent House Republicans have proposed that Fannie Mae and Freddie Mac be unwound and privatized.

The conversation is heating up about closing our ballooning national deficit and reforming the federal tax code. The first proposals from President Obama's National Commission on Fiscal Responsibility and Reform and the Congress have put "everything" on the table, including massive cuts to discretionary spending programs and the elimination of business tax credits.

It remains to be seen whether the new Republican majority in the House will be able to govern effectively. But it is clear that we must do a better job of framing the debate and making our voice heard.

Many of our readers are already very sophisticated in telling the affordable housing story. Now more than ever it is essential that you engage your legislators (especially if they are new) early and often – not just once a year on industry lobby days. Invite your Representative and Senators to your project ribbon-cuttings and groundbreakings. Schedule time with legislators' district staff to educate them about the jobs and the housing opportunities that you have created.

If you need help getting started, ask us. NH&RA is happy to work with our members and friends to help you (and the industry) make the most of relationships with elected officials. We urge you to participate in your local affordable housing coalition and in national groups such as the Affordable Housing Tax Credit Coalition, Housing Advisory Group, and Rental Housing A.C.T.I.O.N. Coalition.

Now is no time to be complacent. With a clean slate now for affordable housing, let's make the most of it.

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

Tax Credit Advisor

December 2010
Vol. XXII No. 12

Publisher: Peter Bell

Associate Publisher: Thom Amdur

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

Director of Communications & Marketing:
Marty Bell

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

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Subscriptions are $329 per year. Special rates are available for community-based nonprofit groups; call 202-939-1790. Discounts also available for multiple subscriptions; contact Scott Oser, 301-279-0468, soser@dworbell.com.

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

Editorial office at same address as above.

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Table of Contents

ISSUE THEME: Mixed-Income Development

The Economic Blender: Mixed-Income Housing Takes Many Forms

Reading the Election Tsunami: GOP Rise Clouds Landscape for Housing

Low-Income Housing Tax Credit

8 HUD Gets Ready to Launch FHA Tax Credit Pilot

19 States Move Forward on 2011 LIHTC Programs

20 State Survey Responses on 2011 LIHTC Programs

26 Texas Court's Fair Housing Decision Raises Wider Scrutiny of Tax Credit Allocation Policies

28 IRS Provides New Guidance on Physical Conditions

Other

29 **Doing More With Less:** HUD Employs Lean Processing to Expedite FHA Section 232 Mortgages

Historic Rehabilitation

31 Crafting the Perfect State Tax Credit

New Markets Tax Credit

33 **A Smoking Good Idea:** Old Cigar Factory Being Transformed Into Neighborhood Services Hub

Columns

Inside front cover
Thom Amdur: *New Developments* Opportunity With the New Majority

22 **David Smith:** *The guru is **In*** Why Massachusetts' Chapter 40B inclusionary zoning survived

Departments

11 In Brief

24 NH&RA News

35 People in the News

36 State Roundup

37 Capital Briefs

Reading the Election Tsunami

GOP Rise Clouds Landscape for Housing

The Republican takeover of the U.S. House of Representatives in the mid-term elections creates more questions than answers regarding what Congress might do regarding affordable housing and community development issues going forward.

Industry officials expressed hope for passage of key housing-related legislation either in the lame-duck session or in the new, 112th Congress that convenes in January. Congress returned to Washington on November 15 for the start of the lame-duck session; will break for Thanksgiving; and will reconvene on November 29 to wrap up business.

Republicans will have a substantial majority control in the House next year, while Democrats retain a narrowed edge in the Senate. The GOP also picked up a number of gubernatorial seats and made big gains in state legislatures. A party switch in the governor's mansion can lead to change in the leadership of the state housing finance agency.

The election results will mean changes in the two parties' leaders next year. Rep. John Boehner (R-Ohio) will be the new Speaker in the House, while Rep. Nancy Pelosi (D-Calif.) switches to Minority Leader and Sen. Harry Reid (D-Nev.) continues as Senate Majority Leader. The leaders and make-up of House and Senate committees and subcommittees will also see changes. Likely new committee chairs, for instance, include Rep. Spencer Bachus (R-Ala.) at House Financial Services and Dave Camp (R-Mich.) at Ways and Means. The Senate Banking Committee will also have a new chair, since Sen. Chris Dodd (D-Conn.) is retiring.

At two November housing conferences in Washington, DC, sponsored by Ballard Spahr LLP and by the Institute for Professional and Executive Development, speakers speculated about what might happen in the lame-duck session and next year regarding housing issues.

For starters, advocates of affordable housing were warned that they can't take current programs for granted in the new Congress.

"You know the expression about there's only one sure thing in life and that's death and taxes. Well, that doesn't include tax credits," Washington, D.C. attorney Richard Goldstein of Nixon Peabody LLP, and counsel to the Affordable Housing Tax Credit Coalition, told the IPED conference. "People talk about the low-income housing tax credit as being a permanent part of the Internal Revenue Code...I much prefer the more accurate [term] 'indefinite' part of the Internal Revenue Code. Because it really isn't permanent; it's only permanent as long as the Congress and the Administration decide they want to continue this program as part of the tax code. That means that Congress can take it away. I don't expect that to happen. But we cannot be complacent about this or anything else we care about in federal law and the federal tax code."

Photo by Nixon Peabody LLP

Richard Goldstein

He added, "With the watershed change in the Congress, and a huge national debt, thirteen trillion dollars and counting....That's a huge issue. And that's going to be impacting the thinking in this Administration and this Congress and for years to come."

Tax Extenders

Affordable housing and community development advocates hope that the lame-duck Congress will approve tax "extenders" legislation to continue or renew a number of federal tax incentive programs, and avoid uncertainties from the issue spilling over into 2011.

"One of the major questions is whether or not Congress will be able to pass the extenders package before finishing this year," said Garth Rieman, of the National Council of State Housing Agencies. He indicated that lawmakers might try to couple extenders provisions with other tax measures, such as an extension of unemployment benefits or extension of the expiring Bush middle-class tax cuts. Another driver could be action to prevent the AMT from hitting middle-income Americans on their 2010 tax returns.

Advocates are particularly interested in the final passage of extender provisions to:

- Continue the Section 1602 low-income housing tax credit "exchange" program.
- Reauthorize the new markets tax credit (NMTC), provide $5 billion for the 2010 funding round, and allow certain NMTC investments to offset alternative minimum tax (AMT) liability.
- Extend the placed-in-service deadline for projects receiving GO Zone housing credits.
- Extend the Build America Bond (BAB) program.

Congress, continued on page 4

Congress, continued from page 3

- Provide $1 billion in initial capital for the National Affordable Housing Trust Fund.

If extenders aren't passed by year-end, the outlook becomes murky. Not only will legislation have to be re-introduced, but Republicans will chair, control, and dictate the agenda of the tax-writing House Ways and Means Committee. In addition, there could well be a move in Congress to try to curtail certain existing federal tax incentives, either as part of a broad deficit-reduction effort that hits federal spending as well, or as part of a tax reform effort.

The bipartisan National Commission on Fiscal Responsibility and Reform, formed by President Obama, issued a preliminary report in November with wide-ranging specific options for raising revenues, trimming or eliminating certain tax breaks, and cutting spending. On December 1, the panel is scheduled to issue specific recommended actions from this menu that have gained the support of at least 14 of the 18 commission members.

"It will be important to watch what comes out of that commission, and the reaction there will be to it, including in Congress," said Thomas Reynolds, senior strategic policy advisor with Nixon Peabody LLP and former GOP congressman on the Ways and Means Committee until 2006. He added, "As the President is putting together his [FY] 2012 budget, he will be looking at some or all of those as potential revenues."

Appropriations

Speakers expressed a mix of hope and worries regarding funding for federal housing programs.

The lame-duck Congress must approve a measure to fund the entire federal government beyond December 3, the expiration date for the current continuing resolution (CR) temporarily funding the government at FY 2010 spending levels. Lawmakers will have to decide whether to pass another CR to fund the government into early 2012, or to approve a consolidated "omnibus appropriation bill" to fund all government departments and agencies through September 30, 2011, the end of FY 2011. All federal programs, including housing programs administered by the U.S. Department of Housing and Urban Development and Rural Development, and the federal weatherization program operated by the Department of Energy, need to be funded.

Several speakers expressed hope that if there is an omnibus spending bill, it might serve as a vehicle to carry various pieces of housing legislation that have already moved, such as elements of the comprehensive housing preservation bill approved by the House Financial Services Committee, or parts of Section 8 reform legislation.

At the same time, though, advocates are fearful that federal housing programs – including those of HUD – could be targeted for funding cuts, if not in an omnibus spending bill then certainly for FY 2012, given that Republican leaders have asserted that one of their priorities will be to cut federal spending to reduce the budget deficit.

Sharon Wilson Géno

"The target for these spending cuts has been very clear," said Sharon Wilson Géno, a partner with Ballard Spahr LLP, who addressed the Ballard Spahr conference. "It will be discretionary domestic, non-military…That part of the federal budget is very small; it's less than 10 percent of the overall federal budget" and includes spending for federal housing programs.

Adding fuel to deficit-reduction efforts could be numerous House oversight hearings in 2011 by GOP-controlled committees and subcommittees, such as to review the health care and financial regulatory reform laws and the rulemaking promulgated from them, and to look at programs and activities funded by the 2009 stimulus bill, which provided dollars for the LIHTC Section 1602 exchange program and Tax Credit Assistance Program, as well as extra public housing capital and federal weatherization monies.

Housing Legislation

Changes in the chairs of the House Financial Services and Senate Banking committees, combined with House oversight hearing findings, expected GOP attempts to target and roll back part of the health care and financial regulatory reform acts, and a Republican – and possibly also Administration – priority on trimming federal spending to reduce the deficit will influence the amount of time that the next Congress devotes to housing legislation, and the specific housing-related

Congress, continued on page 6

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*"Top 50 Affordable Housing Developers," April/May 2010; "Top 10 Companies Completing Acquisitions," April/May 2010

Congress, continued from page 4

bills considered and voted on.

The House Financial Services and Senate Banking committees will have to act on housing finance reform – specifically what to do about Fannie Mae and Freddie Mae and the proper future role of the federal government in supporting and funding housing. This issue, apt to take chunks of time, almost certainly will also raise discussion and decision-making about the role of the Federal Housing Administration and Ginnie Mae.

In addition, these panels may examine the Community Reinvestment Act, which federal banking regulators have already held forums on to solicit suggestions for regulatory improvements. With the reform ball already rolling, there could possibly be attempts – in the House at least – to try to scale back CRA.

Reynolds suggested that House Republican leaders have indicated that the chairs and members of House committees will determine the agenda for their panels, rather than the party leadership – a change he suggested could foster some degree of partisanship.

Photo by Nixon Peabody LLP

Hon. Thomas Reynolds

In any event, Goldstein noted that there will be 110 new members of the House and Senate that need to be educated on affordable housing issues. "It's the responsibility of everybody in this room to educate those new members, or your existing member, about what this program [the LIHTC] does," he said.

Reynolds described how, as a young Assemblyman in New York State heading an affordable housing task force, he learned "how to talk to Republicans" to win them over on housing issues.

"If your children can't live in your hometown, you've got an affordable housing problem. If your cops, firemen, and teachers can't live in your hometown, you've got an affordable housing problem. If there's homeless…you've got a housing problem." TCA

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HUD Gets Ready to Launch FHA Tax Credit Pilot

The U.S. Department of Housing and Urban Development (HUD) is about to make further improvements to its Federal Housing Administration (FHA) multifamily mortgage insurance programs, including a new tax credit pilot program to roll out in the first quarter of 2011.

The initiatives were described by HUD official Christopher Tawa, who spoke October 18 during the National Housing & Rehabilitation Association's 2010 Fall Developers Forum in Boston.

In the past year, HUD has taken a series of actions to cut processing times and mitigate financial risk in the FHA multifamily programs and to remove impediments to getting HUD-insured mortgages for low-income housing tax credit (LIHTC) projects. The Department has tightened underwriting criteria for FHA loans for market-rate and affordable multifamily projects, ended a previous requirement to escrow all tax credit equity at the time of closing, and eliminated duplicative subsidy layering and cost certification requirements.

New Pilot Program

In early 2011, HUD expects to launch a new pilot program designed to dramatically cut the waiting period and processing times for FHA mortgages to finance LIHTC projects (e.g., Section 221(d)(4), 223(f)), including through the delegation of greater responsibilities to lenders.

The pilot, characterized by Tawa as an "express lane" for LIHTC transactions, comes as HUD copes with a huge volume of multifamily loan business but less staff, forcing applications to pile up in a "queue" to wait a considerable time before they get to the point of processing by FHA. According to Tawa, HUD did $13.85 billion in total FHA multifamily and health care loan business in the fiscal year (FY 2010) ended September 30, 2010, some three times the volume of FY 2009 and four times FY 2008. The current backlog of FHA multifamily applications is at least $10 billion.

According to Tawa, the tax credit pilot program, mandated by the Housing and Economic Recovery Act of 2008, will initially be limited in scope. It will only be available in 4 or 5 HUD Hub offices – he wouldn't disclose which – and restricted to certain types of LIHTC projects within the jurisdiction of the selected Hub offices.

"The projects that will qualify will be a smaller group initially," said Tawa. "And then we'll expand the program after we get some experience with it." He added,

FHA, continued on page 9

FHA, continued from page 8

"We're still talking about that criteria [for project eligibility]. However, they'll have a relatively low loan-to-cost, as far as the size of the HUD loan. They will not be bond deals; only 9% deals initially. And it will require transactions with real equity; no 100% exchange deals, but real investors."

The pilot will also be limited to approved FHA Multifamily Accelerated Processing (MAP) lenders that HUD designates as qualified to underwrite FHA mortgages to fund new construction or substantial rehabilitation subsidized/affordable multifamily housing projects. This will be the highest of four different levels of qualification that HUD will be grouping all FHA lenders into. Tawa anticipated that lenders will apply for qualification by year-end, and be reviewed and qualified by HUD during the first few months of 2011.

HUD is likely to issue a mortgagee letter to implement the tax credit pilot.

Other Forthcoming Actions

Additional developments planned by HUD include:

- Issuing a revised MAP underwriting guide for lenders by year-end. "That will contain quite a bit more instruction about underwriting affordable loans," said Tawa, noting it will "be more explicit about permitting equity bridge loans during the construction period, and allowing equity bridge loans to continue until the [project's] placed-in-service date."
- Releasing revised FHA multifamily loan documents, in early 2011.
- Working on expanding the Section 223(f) program. HUD, for instance, is looking at allowing a greater per-unit dollar amount of rehabilitation in connection with the refinancing of a property, particularly for affordable housing preservation projects.
- Trying to identify ways to invigorate FHA's risk share program, through underwriting changes that increase flexibility. HUD has been talking with the National Council of State Housing Agencies, Fannie

FHA, continued on page 10

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FHA, continued from page 9

Mae, and Freddie Mac, Tawa said, "about ways that we could tweak the [FHA] risk-share program to make it more useable and do more affordable housing loan production under it."

- Replacing a current note rider with a new subordination agreement, similar to one used by Fannie Mae and Freddie Mac, that is friendlier to subordinate debt lenders.
- Adopting a policy to permit the use of subordination non-disturbance agreements with commercial tenants. This change is designed to facilitate the recruitment of major, high credit quality commercial tenants to FHA-financed mixed-use projects. A non-disturbance agreement permits a current tenant to stay under their present lease in the event of a loan default, and not face eviction. The new policy will also address issues such as rooftop leases for cell phone towers, cable, and similar purposes. TCA

HUD Proposes Updates to Multifamily Rental Regulations

HUD is soliciting public comments by December 13 on a rule proposing that HUD remove outdated regulatory language and policies of the Department relating to its FHA multifamily rental housing programs. The rule ties in with HUD's efforts to revise its closing documents for FHA multifamily loans. The Department put its proposed revised multifamily closing documents out for public comment earlier.

(http://edocket.access.gpo.gov/2010/pdf/2010-28420.pdf) TCA

In Brief

Joint Center Releases New Publication on LIHTC

The Joint Center for Housing Studies of Harvard University has released a new policy brief, *Long-Term Low Income Housing Tax Credit Policy Questions*, which draws on existing analyses and interviews with LIHTC industry practitioners to discuss issues facing the program beyond immediate problems engendered by the financial crisis. In particular, it looks at policy issues, including income and geographic targeting, the nature of the LIHTC investor base, and the adequacy of mechanisms for funding ongoing capital needs of tax credit properties.

(http://www.jchs.harvard.edu/publications/government programs/longterm_low_income_housing_tax_credit_policy_questions.pdf)

Boston Financial Investment Management Closes First LIHTC Fund

Boston Financial Investment Management, LP recently closed its first low-income housing tax credit investment fund, BF Advantaged Tax Credits I. The initial fund closing was $40 million; a second closing of $35 million ($75 million total fund size) is scheduled to occur on November 30, 2010. After the second closing, the fund will consist of four investors, including one new to the industry. The fund has a maximum size of $100 million. "We are excited to be back in the syndication business," says Ken Cutillo, Boston Financial's CEO. "The closing of this fund is a tribute to the hard work and dedication of our production group."

OCCH Closes $99 Million Tax Credit Fund

Ohio Capital Corporation for Housing (OCCH) recently closed a new low-income housing tax credit fund, Ohio Equity Fund for Housing XX (OEF XX). The new fund raised $99 million in equity. "We are pleased that through the commitment of the OEF XX investors, an additional 1,100 units of affordable housing will be made available," said Hal Keller, OCCH President. The fund's investors are Fifth Third Community Development Corporation, Key Community Development Corporation, JPMorgan Capital Corporation, Huntington National Bank Community Development Corporation, Park National Bank, FirstMerit Bank, U.S. Bancorp Community Development Corporation, and First Federal of Lakewood.

Red Stone Reports on Chicago Area Equity Investment

Red Stone Equity Partners, LLC reports that it has played a key role in enhancing the affordable housing landscape in the Greater Chicago area, providing $68 million in equity for LIHTC projects in this area with total development costs of more than $170 million. Among the funded developments are the Britton Budd revitalization, an historic preservation and rehabilitation effort in which Red Stone partnered with the Chicago Housing Authority (CHA), and CHA's Kenmore Senior and Pomeroy Senior apartment developments.

City Real Estate Advisors Increases Equity Production

City Real Estate Advisors, Inc. announced that it has increased equity production and investor closings by approximately 35% for the fiscal year ending September 30, 2010 as compared to the previous year. Investor equity was raised for proprietary and multi-investor national funds. CREA achieved this increase, in part, through the addition of several new investors. The company also said it expects to close, in the fourth quarter of calendar 2010, a $100 million multi-investor national fund and two Indiana Economic Funds utilizing Section 1602 exchange funds combined with investor equity. TCA

The Economic Blender

Mixed-Income Housing Takes Many Forms

The Paramount
San Francisco, California

Developed by
Related California

From a 320-unit market-rate condo/low-income apartment development planned in tony Santa Monica, California, to a 75-unit historic rehabilitation project outside Boston, mixed-income housing development is taking different forms these days.

Local government desires and other factors are encouraging more mixed-income projects, which combine affordable and market-rate units – the former often using low-income housing tax credits. But this particular type of development poses challenges and requires special skills to successfully design, finance, and build.

The Related Companies, based in New York City, and Related California, a subsidiary which operates out of Irvine, have developed numerous and varied mixed-income housing projects.

"When people say mixed-income housing it can mean a lot of different things," says Bill Witte, President of Related California and a former municipal housing official in San Francisco.

Bill Witte

Witte says there are several different "models" of mixed-income housing projects, and Related has developed all of these. They include:

- **80/20 deals.** Financed by tax-exempt bonds, 20% of the project's units are rented to low-income households at or below 50% of the area median income (AMI), and 80% are market-rate apartments, bearing market rents.
- **HOPE VI projects.** Related has worked with public housing authorities receiving federal HOPE VI grants to redevelop old public housing sites that, Witte says, "both replace existing public housing, but also inject some mix of incomes into the master plan." A common mix in projects includes some public housing units, some LIHTC units, and some market-rate units. In several of Related's HOPE VI projects, the market-rate component has been for-sale homes targeted to first-time buyers.
- **Housing developed under local inclusionary housing programs.** These municipal programs, which are prevalent in California, require a certain percentage of new housing units, such as in a large proposed master plan community involving home builders, to be affordable. The affordable units, for example, might be in one or more stand-alone affordable housing rental properties that supplement newly built market-rate single-family homes.

Santa Monica Development

An example of a "variation on the inclusionary theme," Witte adds, is a new development that Related California will be building two blocks from the Pacific Ocean in Santa Monica, a high-income city abutting Los Angeles.

Called The Village for now, it will contain two buildings with 160 market-rate condominiums and a third building with 160 LIHTC apartments – a mix of units affordable to households at or below 30%, 50%, and 60% of AMI. The condos haven't been priced yet, but Witte says, "This will be a very, very high-end project with values in excess of $800 a square foot."

The city issued an RFP for redevelopment of the 3.5-acre site and selected Related as the developer. The RFP stipulated that at least half of the housing units built must be affordable, twice the level mandated from the city's use of redevelopment funds to acquire and clear the site.

"In order to realize the highest land value to the city, which is then being used to subsidize the affordable component, it became clear that the market-rate component had to be condominiums rather than rentals," says Witte. "In a condominium, while it is theoretically possible to scatter affordable rental units within a for-sale condominium, it's virtually impossible to finance. So the city accepted the premise that the affordable rental building could be a separate building."

He notes, "The location is super-premium, and Santa Monica is a very highly desirable, high-value community. We're working on construction documents now; we hope to start construction by late next year."

The city will lease the site for 99 years, and the lease payments will be fully prepaid. Witte says the long-term ground lease and full prepayment were needed to help secure financing for the for-sale component.

Major funding sources for the LIHTC component of the project include tax-exempt financing, equity generated by 4% housing credits, and a significant state grant. Funding sources for the market-rate condo component will be a conventional construction loan and conventional equity.

80/20 Developments

Related Companies LP of New York has financed 20 luxury high-rise rental projects using the 80/20 program,

Mixed-Income, continued on page 14

Mixed-Income, continued from page 13

and Related California has completed three 80/20 projects so far and is working on a couple others. According to Witte, Related's 80/20 projects "tend to be located in very high-rent locations…and tend to get the highest [market] rents in their submarket."

He indicated that the design and the amenities of 80/20 projects are shaped by the location; a prime location and the quality of the product are the lures that attract residents, market-rate or affordable.

Related California's largest completed 80/20 development is The Paramount, a 40-story high-rise in the SoMa area of downtown San Francisco near the new Museum of Modern Art, containing 389 market-rate apartments and 98 LIHTC units plus retail as well.

Related typically uses "deep rent skewing" for its 80/20 projects, where 15% of the affordable units are rented to tenants at or below 40% of AMI, and the rest to households at or below 50% of AMI. This allows flexibility in leasing units over time as affordable units are vacated. As for rent levels charged on its market-rate apartments, "The market is whatever the market will bear," says Witte. In major cities, like New York, Los Angeles, and San Francisco, market rents in Related's 80/20 properties can be quite high.

"In San Francisco, which has a very high median income, the affordable rent for a one-bedroom may be eight hundred, nine hundred dollars a month or even more," says Witte. "But that's in a market where the market-rate one-bedroom is say twenty-three hundred, twenty-four hundred." In New York City, the market rents can be much higher.

The size of the affordable component in a bond-financed project influences the make-up of the financing package.

"We have a rule of thumb that an 80/20 project is financed like a traditional market-rate project, with conventional equity (from pension funds or other institutional investors)," says Witte. "But as the affordable percentage increases much beyond [20%], the project must be underwritten more like a traditional LIHTC project, with equity coming only from tax credit investors and local housing subsidy providers. A project with an affordable component of 40%, for example, generally won't generate enough return to attract a conventional equity investor."

Witte indicated that increasing the affordable component of a project much beyond 20% can start to challenge the economic viability of the deal, particularly the market-rate component, and can deter conventional equity providers – income-oriented investors that also want sheltering depreciation losses.

In a mixed-income project with a sizable affordable component, Related California typical utilizes LIHTC equity, local housing or redevelopment funds, and debt – and no conventional third-party equity.

Two of Related California's recent 80/20 projects, about three blocks apart in the Little Tokyo neighborhood of Los Angeles, are Sakura Crossing, 231 units, and Hikari, 127 units. Each has a 20% affordable component. In these deals, Related obtained conventional equity from pension funds and sold the 4% housing credits to banks. Each development also has some ground-floor retail.

Mixed-Income 80% Affordable

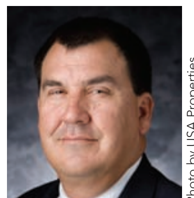
Photo by USA Properties Fund, Inc.

Geoff Brown

USA Properties Fund, Inc., based in Roseville, Calif., has also developed some mixed-income rental housing projects. "We want to do more of it," says President and CEO Geoff Brown, "because we see of a lot of localities wanting that."

The company has developed and manages more than 70 LIHTC communities throughout California and Nevada, some of which contain a mix of affordable and market-rate apartments.

In contrast to Related's approach, the affordable component in USA Properties Fund's mixed-income projects generally is 80%, and the market-rate component no larger than 20%. "On an affordable housing deal," says Brown, "if you do too big a percentage of market rate, the typical tax credit investor is going to shy away from wanting to invest in that because they perceive it as risky…I personally think the tipping point is 20%."

The prevailing view is that traditional LIHTC investors are not keen on mixed-income LIHTC projects because they see the market-rate component as creating additional risk for them without any compensating additional benefit.

Brown favors as wide an income band as possible in mixed-income projects. This is the gap between the lowest income limit for LIHTC tenants – Brown favors multiple income layers for tax credit units – and the

Mixed-Income, continued on page 16

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Recent Tax Credit Equity Closings

Capper Residential II	Columbia at Edgewood	Dahlia Square Senior	Krohn West
Washington, DC	Atlanta, GA	Denver, CO	Phoenix, AZ
$3,788,816	**$8,362,636**	**$9,124,088**	**$8,156,635**
October 2010	October 2010	October 2010	October 2010
Phoenix on the Fax	**Renaissance Preserve III**	**Santamerica**	**Washington Beech (2A)**
Denver, CO	Ft. Myers, FL	Ponce, PR	Boston, MA
$6,089,915	**$9,889,511**	**$16,971,369**	**$13,302,921**
October 2010	October 2010	October 2010	October 2010
Washington Beech (2B)	**Cambridge Affordable Presidential Apartments**	**Lyndon B. Johnson Apartments**	**Mariposa at Ella Boulevard**
Boston, MA	Cambridge, MA	Cambridge, MA	Houston, TX
$14,826,405	**$17,327,749**	**$21,248,382**	**$14,166,993**
October 2010	September 2010	September 2010	September 2010
Preston Pointe	**Residences at Fountain Square**	**Roosevelt Manor/ Branch Village II**	**The Crossings at North Hills**
Indianapolis, IN	Waukegan, IL	Camden, NJ	Los Angeles, CA
$5,220,000	**$12,500,000**	**$4,591,854**	**$8,998,512**
September 2010	September 2010	September 2010	September 2010

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Co-Director, Tax Credit Investments
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mike.riechman@rbccm.com

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Mixed-Income, continued from page 14

incomes of the market-rate renters. "When you can widen the income band our experience is…you tend to increase your lease-up rates, because when somebody walks in your door, you're not having to turn them away because they don't meet the current income [limit]…You have various income levels to offer."

In a mixed-income seniors project in Oceanside completed by the company a few years ago, "the market-rate units leased as fast as the affordable units," says Brown.

Brown suggests strong current and future demand for seniors mixed-income housing projects in particular. Demographic trends point to a growing seniors population of different income and activity levels but a common desire for attractive, convenient housing that fits their budget and lifestyle and permits them to "age in place." The need for affordable rental is especially great for seniors struggling to get by on Social Security and what's left of devastated 401(k)s and IRAs.

Historic Rehabilitation

In Sharon, Mass., a Boston suburb, Beacon Communities LLC has completed development of a 75-apartment mixed-income project that involved the historic rehabilitation and adaptive re-use of a former public school plus new construction.

Boston-based Beacon partnered on the deal with Frontier Enterprises, Inc., of Canton, Mass. The project, Wilber School Apartments, recently won a 2010 J. Timothy Anderson Award for Excellence in Historic Rehabilitation from the National Housing & Rehabilitation Association (NH&RA).

The two-building brick historic school, constructed in 1921, was renovated into 31 apartments, and another 44 apartments were added in a new building. The pet-friendly development also has a fitness center, club room, dog park, and other amenities.

Howard Cohen

Of the 75 units, 20% are LIHTC eligible; 10% are "workforce" units affordable to households at 90% to 110% of AMI; and 70% are market-rate. Market-rate rents are "in the two dollar per square foot plus range," said Beacon Communities CEO Howard Cohen, who described the project at NH&RA's recent 2010 Fall Developers Forum in Boston.

The town has a heavy population of affluent young professionals.

Photo by Prellwitz/Chilinski Associates, Inc.

Wilber School Apartments, Sharon, Massachusetts

"This is a high-income community, not a lot of rental housing," and the property is next to a commuter rail station, Cohen said. "So we were able to get quite a high market rate."

The LEED Gold project, the first for Beacon, had a total development cost of about $28.3 million. Major funding sources included tax-exempt bonds and equity generated by federal and state housing and historic tax credits.

Architectural features include 15-foot ceilings in the apartments in the old buildings, plus brick elements and curves from the original structure replicated in the new building. Beacon got new, matching bricks for the project from the same quarry that provided the original bricks for the school. "All the [apartment} floors are laminated imitation wood," added Cohen. "It's very aesthetically pleasing, very easy to maintain." Moreover, the wood floors are "floating" – a special construction technique was used – so that the sounds of footsteps are not transmitted to the floor below.

Finally, a no-smoking policy – by residents or guests in their apartments or common areas – is a condition of occupancy. "It is a smoke-free building," says Cohen, "which has been very positively received in Sharon, and something that we are doing in a number of our developments." TCA

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States Move Forward on 2011 LIHTC Programs

State housing credit agencies are moving ahead with their plans and schedules for their 2011 low-income housing tax credit (LIHTC) funding rounds, with a number already having forward committed some of their anticipated 2011 credits.

A recent survey by the *Tax Credit Advisor* drew responses from 46 states, the District of Columbia, Puerto Rico, and Chicago about the status of their 2011 qualified allocation plans, their 2011 application deadlines, their 2011 credit volume ceiling and commitments so far, and their remaining 2010 credits *(see pp. 20-21 for state-by-state responses).*

Housing credit agencies (HCAs) are moving forward with their 2011 credit programs even though they don't know yet whether the Section 1602 exchange program will be extended.

Of the state HCAs responding to the survey, about half reported that their 2011 QAP has either been signed by the governor, is awaiting the governor's signature, is final, or has been approved. A number of others said that their QAP is in draft form, in many cases out for comment. Only a few hadn't yet begun the process of developing a 2011 QAP, and a few are keeping the same QAP they used in 2010.

Most of the application deadlines for states for their 2011 housing credits are in the future. Only six states, as of the date of their survey response, had an application deadline for 2011 credits that had already passed. A few states will be holding application rounds in 2011 to commit 2012 housing credits.

Twenty-four states reported that they have already forward committed some or all of their 2011 housing credits, with the aggregate amount committed totaling more than $117 million. Eighteen respondents indicated that they haven't committed any 2011 credits so far.

Thirteen states reported remaining 2010 housing credits, totaling $26.6 million, ranging from a de minimus amount to four states with more than $4 million each. Some of these states expected to award additional 2010 credits before year-end, while others planned to carry over unused amounts into 2011. TCA

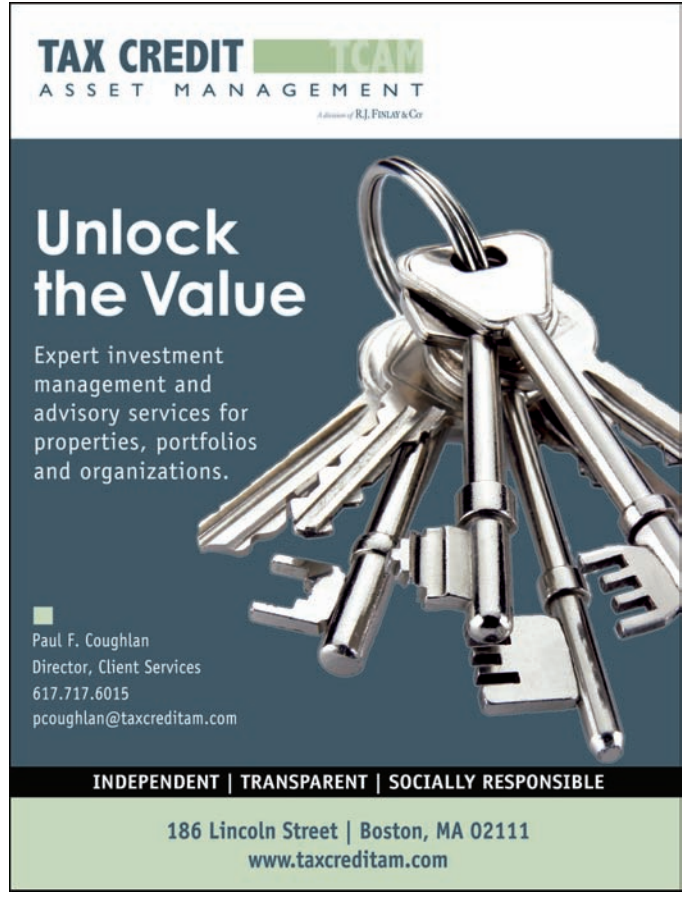
HUD Issues Notices on Available Funding Competitions

HUD has recently issued notices announcing the availability of funds and soliciting applications under the following programs:

- Resident Opportunity and Self-Sufficiency (ROSS) Service Coordinators Program. $35 million available. Application deadline: February 21, 2011.

- Public and Indian Housing Family Self-Sufficiency Program under the ROSS Program. $15 million available. Application deadline: January 19, 2011.

(http://portal.hud.gov/portal/page/portal/HUD/program_offices/administration/grants/fundsavail) TCA



State 2011 Low-Income Housing Tax Credit Programs

Status of Qualified Allocation Plan, Application Deadlines

State	Survey Response Date	Status of QAP for 2011	2011 Credit Application Deadline(s)	Estimated 2011 Credit Authority	2011 Credits Credits Committed to Date	Remaining 2010 Credits
Alabama	11/1/10	Draft issued for public comment.	March 2011, dates TBD	$10,000,000	$283,599	$0
Alaska	11/18/10	Final, same as 2010.	10/5/10	$2,575,698	NA	$110,698
Arizona	NR	Revised draft to be issued week of 11/15/10.	3/1/11	NA	NA	NA
Arkansas	NR	Approved	2/4/11	NA	NA	NA
California	11/10/10	Draft regulations changes currently reviewed and will be made public ready for comment by end of Nov. 2010.	Tentative 3/23/11, 7/6/11	$79,467,577	$78,186	$0
Colorado	11/15/10	Awaiting governor's approval.	Round 1: Letters of Intent, 2/1/11; Applications, 3/1/11. Round 2: Letters of Intent, 6/1/11; Applications, 7/1/11.	$10,965,255	$9,776,244	$1,189,011
Connecticut	10/27/10	Proposed amendments to draft released for public comment on 11/5/10. Comment deadline 12/15/10.	April 2011, date TBD	$7,350,000	$1,600,000	$0
Delaware	11/15/10	In draft. Scheduled to go out for public comment around 11/27/10.	4/8/11	$2,465,000	$96,685	$0
District of Columbia	11/16/10	In process. Should be done by January 2011.	May 2011 (tentative)	$2,465,000	$1,549,569	$0
Florida	10/29/10	Sent to governor for signature.	February 2011 (expected)	$39,000,000	$29,789,304	$0
Georgia [1]	11/15/10	Draft issued. Comment period ends 11/30/10.	6/24/11 (proposed)	$21,000,000	$0	$5,854,108
Hawaii	11/12/10	Approved. To be published by 12/15/10.	1/31/11	$2,784,632	$0	$57,921
Idaho	10/27/10	Public hearing held 10/27/10. Board approval and governor signing to occur before year-end.	9/3/10, 2/11/11, 9/2/11	$3,491,943	$2,569,225	$0
Illinois (IHDA only)	11/16/10	In process. Draft for public comment to be available mid- to late-November.	Jan. 2011 for Preliminary Site & Market Assessment documentation; tentative 4/15/11 application deadline	$21,000,000	$2,250,000	$0
Ill.-Chicago	10/27/10	No plans to change QAP.	Anticipate will have round but nothing set yet.	$6,025,154	NA	NA
Indiana	10/27/10	Approved	11/1/10	$14,000,000	$0	$3,000,000
Iowa	11/10/10	Draft issued for public comment.	3/8/11	$6,450,000	$0	$5,400,000
Kansas [2]	11/4/10	Draft stage. Public hearing 11/16/10.	2/4/11, 8/5/11	$6,000,000	See footnote	$0
Kentucky	11/15/10	Signed by governor.	3/1/11	$9,275,342	$1,216,384	$4,411,764
Louisiana	10/27/10	NA	9/17/10	NA	NA	NA
Maine	11/12/10	Final. 2012 QAP process to start in January 2011.	10/28/10; will be one round in 2011 (date TBD) for 2012 credits.	$2,800,000	NA	TBD
Maryland	11/1/10	Draft QAP issued for public comment.	4/12/11, 9/20/11	$12,000,000	$5,744,821	$0
Massachusetts	11/15/10	Not yet started; no major changes anticipated.	2 anticipated rounds: late March 2011, late October 2011	$14,176,212	$13,090,284	$0

Source: Responses by state housing credit agencies to Tax Credit Advisor survey. Information as of the date of the agency's response to survey. Information for non-responding state agencies gathered from state agency Web sites. Precise amount of each state's 2011 per capita credit cap won't be official until IRS transmits official 2010 state population estimates, probably in early 2011.

NA = Not Available. TBD = To Be Determined. NR = No Response to Survey.

(1) Georgia: Expects to forward commit a substantial amount of 2011 credits by 12/31/10. (2) Kansas: Have tentatively forward committed most 2011 credits, depending on what happens with exchange program extension. (3) Missouri: Additional $13.2 million in state 9% housing credits, plus 4% federal and state housing credits also available in funding round with 11/8/10 application deadline. (4) New Jersey: $12 million available will be 2012 credits; have already forward committed all 2011 credits. (5) Oregon: 2011 funding round to offer 2012 credits ($7,330,000); all 2011 credits have been forward committed.

State	Survey Response Date	Status of QAP for 2011	2011 Credit Application Deadline(s)	Estimated 2011 Credit Authority	2011 Credits Credits Committed to Date	Remaining 2010 Credits
Michigan	11/15/10	Final	Rolling Round, opens 12/1/10 closes 2/1/11. General Round, 3/1/11.	$20,000,000	$0	$0
Minnesota	11/12/10	Signed by governor.	6/15/10, 2/1/11	$11,059,049	$10,600,000	$0
Mississippi	10/29/10	Developing amendments. Public hearing on 11/1/10. Proposed changes to be posted on Web site afterwards.	4/29/11 (proposed)	$6,300,000	$0	$0
Missouri [3]	10/27/10	Final	11/8/10	$13,200,000	$0	NA
Montana	10/27/10	Signed by governor.	1/21/11 and (if needed) 5/6/11	$2,465,000	$0	$0
Nebraska	11/15/10	Signed by governor.	Round 1: threshold, 1/7/11; final, 2/4/11. Round 2: threshold, 3/25/11; final, 4/22/11.	$3,800,000	$0	$182,879
Nevada	10/27/10	Draft. Public comment period began 9/25/10. Hope to be adopted by 12/1/10.	5/6/11	$5,693,533	$1,827,072	$0
New Hampshire	10/27/10	Final	3/4/11. Must file conceptual app. by 12/4/10.	$2,800,000	$0	$90,000
New Jersey [4]	10/29/10	Developing. Hope to have draft out for public comment by year-end.	May 2011 (est.)	$12,000,000	All	$0
New Mexico	11/15/10	Signed by governor.	1/31/11	$4,320,793	$219,179	$0
New York SHCR	10/27/10	Approved QAP in place (no changes).	2/9/11	$43,000,000	NA	$0
North Carolina	10/27/10	Draft. Expected to be final in November.	1/14/11	$20,000,000	$0	de minimus amount
North Dakota	11/9/10	Proposed draft going to board on 11/12/10; to be posted on Web site week of 11/15/10 for public comment.	2/28/11 and (if needed) 4/29/11	$2,465,000	$0	$374,600
Ohio	11/15/10	Final	10/14/10	$24,000,000	$0	$0
Oklahoma	11/17/10	2011 rules signed by governor. 2011 application to be approved by board on 11/18/10. QAP will then be final.	1/13/11, 7/7/11	$9,100,000	NA	$1,200,000
Oregon [5]	11/10/10	Amended 2009 QAP still active.	4/29/11 (for 2012 credits)	$7,330,000	All	$0
Pennsylvania	10/28/10	Approved and sent to governor.	Preliminary application: 11/5/10. Underwriting application (for qualifying applicants): 3/1/11.	$26,470,000	$1,000,000	$0
Puerto Rico	11/15/10	Draft to be issued this week for public comment.	2/28/11 (for 2012 credits)	$8,000,000	$8,000,000	$0
Rhode Island	10/27/10	Signed by governor.	11/19/10	$2,465,000	$0	$0
South Carolina	10/27/10	Draft posted for comment through 11/9/10. Final document to be submitted to board on 11/16/10. If no further changes recommended, QAP will then be sent to governor.	Tier One: 2/25/11, Tier Two: 6/3/11	$10,000,000	$0	$0
South Dakota	11/15/10	2011-2012 QAP sent to governor.	2/28/11	$2,465,000	$2,008,882	$0
Tennessee	11/18/10	Ready to submit to governor.	3/1/11	$15,000,000	$0	NA
Texas	11/8/10	Governor must approve by 12/1/10.	Pre-application: 1/7/11; Application: 3/1/11.	$52,000,000	$20,536,188	$0
Utah	NR	Final	10/1/10	NA	NA	NA
Vermont	10/28/10	Haven't started process.	Open funding, no deadlines.	$2,502,000	$2,432,000	$0
Virginia	10/27/10	Approved by board on 10/13/10, sent to governor.	3/11/11	$16,500,000	$3,000,000	$0
Washington	10/28/10	Signed by governor.	1/13/11	$14,000,000	$283,566	$0
West Virginia	NR	NA	NA	NA	NA	NA
Wisconsin	11/15/10	Signed by governor.	2/4/11 (non-competitive applications 12/29/11)	$12,157,764	$0	$4,750,000
Wyoming	10/27/10	To board for approval on 10/29/10, then to governor.	1/31/11	NA	$0	NA

Why Massachusetts' Chapter 40B inclusionary zoning survived

Despite an election evening when small-government sentiments predominated, the same feisty Massachusetts citizens who approved a referendum to eliminate the sales tax on alcoholic beverages also rejected a referendum that would have repealed one of the nation's oldest inclusionary-zoning laws, known as Chapter 40B.

The victory is significant, with affordable housing implications nationwide.

Over the last twenty years, as the Federal government has steadily reduced its involvement with affordable housing, inclusionary zoning – compulsion or reward for adding affordable housing to new developments – has arisen to become an integral part of the legal framework by which we add affordable housing, principally using the low-income housing tax credit, to America's better neighborhoods. Given the rising prevalence of NIMBYism (including under the guise of greenery), without inclusionary zoning as a lever I doubt we'd see many suburban LIHTC properties built at all. Certainly in Massachusetts, many suburbs confronted with the prospect of LIHTC housing kick up a stink that would do a three-year-old proud.

Among the oldest inclusionary zoning laws, Chapter 40B has certainly been one of the most effective at preventing localities from using "snob zoning" (such as acre or even two-acre lot requirements) to discriminate under the guise of neutrality. It has two planks: *If* a community lacks 10% affordable housing, *then* a developer proposing a new property with 25% affordable housing can override local zoning and inject high-density housing. Under 40B, no longer can "snob zoning" be used to keep affordable housing out of communities.

Over its four decades of use, mission-oriented LIHTC developers in Massachusetts have come to rely on Chapter 40B as an integral part of their business model; other developers of less affordability-oriented motivation have been alleged to use it as a threat – approve our proposal or we'll shove a 40B high-density apartment block down your town's throat. Because of this, from the repeal campaign's beginning Chapter 40B's detractors presented their referendum as a defense of suburban home-rule rights against big-government mandates enforced by out-of-state interlopers. Yet they were trounced, 58% to 42%.

David A. Smith

Why? Four reasons tell the story:

1. **The pro-40B advocates were more passionate than the antis.** Throughout the summer and fall, my affordable-housing friends were galvanized by the prospect of an anti-government wave, to be fueled by rumored out-of-state-funded attack ads. Yet the attack ads didn't materialize, whereas the "No on 2" signs and stickers blossomed, and the pro-inclusionary zoning forces really worked to get their message out.

2. **The bystanders voted to keep it.** Check out the map above (green towns voted to repeal Chapter

Guru, continued on page 23

Guru, continued from page 22

40B, red towns to keep it, interactive version at http://www.boston.com/news/special/politics/2010/ballot_questions/housing/results/). Yes, there was a city-suburbs divide: while the suburban ring of commuters voted largely en bloc for repeal (usually by solid but not overwhelming margins like 55%-45%), the high-cost markets close to Boston voted to keep it by wide margins (over 75%). But the big surprise, at least to me, was in the state's western half of the state: Springfield, Holyoke, and the Connecticut valley towns. With economies and rental markets weak, inclusionary zoning is not terribly important out there, so they were the closest thing to disinterested voters one could find in the state. Almost without exception, they voted to keep Chapter 40B, sometimes by wide margins.

3. **You can't beat something with nothing.** Those favoring repeal offered only the most superficial of policy arguments, amounting to little more than a burning desire for Chapter 40B to go away. They even claimed, without a scintilla of evidence, that repealing 40B would produce *more* affordable housing, an argument that defies common sense. The pro-inclusionary zoning crowd had both statistics and stories on their side – more than half the Commonwealth's towns have a Chapter 40B development, and in the main they are attractive and well-integrated into their communities. The antis, in short, offered nothing – the pros had real properties and real people to point to.

4. **In the end, the voters found the real issue – any community can preserve itself just by building some affordable housing.** If Chapter 40B is a disease, it is one for which an inexpensive vaccine is always available – have 10% affordable housing. (This has led some communities to float novel counting strategies like including mobile home parks and even prisons as "affordable housing.") Any community offended by out-of-town developers ramming vista-busting condos into their sylvan glades has an easy remedy – build something better yourselves!

Like many legislative products, Chapter 40B has

Those favoring repeal offered only the most superficial of policy arguments, amounting to little more than a burning desire for Chapter 40B to go away.

plenty of warts and could be significantly improved. But the repeal crowd was not interested in dialog or improvement – they sought its elimination, offering nothing in return. Hence the voters faced not the complicated question, "Could Chapter 40B be made better?" (Answer: Yes), but rather the simpler one: "Should we keep it or dump it?" And on that straight vote of confidence question, inclusionary zoning prevailed, 58%-42%. TCA

David A. Smith is Chairman of Recap Real Estate Advisors, a Boston-based real estate services 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.

NH&RA News

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

CEFAH Develops White Paper on Utility Allowances

The Council for Energy Friendly Affordable Housing (CEFAH), a council of the National Housing & Rehabilitation Association, has developed a white paper suggesting improvements for how utility allowances should be computed for HUD-assisted, USDA Rural Development, and LIHTC properties.

Utility allowances reduce the out-of-pocket rent charged to tenants who pay for utilities themselves. Various current methodologies are used to calculate utility allowances; most penalize newer and energy-efficient buildings because they are weighted toward the average utility use of older existing properties. As a result, the utility allowance is larger than necessary for energy-efficient properties.

NH&RA's Legislative Leadership Committee has also been involved in development of the white paper.

In other developments, CEFAH continues to work with other organizations to try to get the U.S. Department of Energy to change current policy and allow federal weatherization assistance program funds to be provided as loans rather than grants to fund improvements to multifamily rental properties. The current policy – allowing grants only – discourages the use of weatherization funds for low-income housing tax credit projects since it reduces the tax credit amount.

Upcoming Conferences

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

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

National Housing & Rehabilitation Association
2011 Winter New Markets Tax Credit Symposium
February 23, 2011
Hyatt Regency Coconut Point, Bonita Springs, Fla.

NH&RA Winter Conferences in Florida Open for Registration

NH&RA has opened registration for its two winter conferences. The conferences are NH&RA's 2011 Annual Meeting, on February 23-26, and NH&RA's 2011 Winter New Markets Tax Credit Symposium, on February 23. Both events will be held at the Hyatt Regency Coconut Point Hotel in Bonita Springs, Fla. NH&RA is inviting proposals from industry participants wishing to speak at either conference: contact Thom Amdur, 202-939-1753, tamdur@housingonline.com. For details on the conferences and to register, go to http://www.housingonline.com/Events.aspx

HOPE VI Council Meets With HUD Officials

NH&RA's HOPE VI Council met on October 26 with senior HUD officials to discuss proposed ways to try to rectify the financial difficulties experienced by a number of existing HOPE VI projects because they received insufficient annual operating subsidies. Department officials included Dominque Blom, Deputy Assistant Secretary for Public Housing Investments; Susan Wilson, Director, Urban Revitalization - HOPE VI Division; and Greg Byrne, Senior Project Manager for the Assistant Secretary for Public and Indian Housing and HUD's director of implementation for the Transforming Rental Assistance (TRA) initiative.

The HOPE VI Council has mapped out a "policy toolbox" that HUD can implement within its current legal authority to stabilize these projects. One potential solution includes what amounts to a piloting of the Administration's TRA proposal, whereby operating subsidies are converted to long-term project-based Section 8 rental assistance. This approach is embodied in certain pending proposed legislation, and in a new draft bill by U.S. Rep. Keith Ellison (D-Minn.).

At the meeting, NH&RA also provided feedback on

NH&RA News, continued on page 25

NH&RA News, continued from page 24

the recent, initial NOFA for the Choice Neighborhoods Initiative Program, and offered suggestions for possible legislative amendments and regulatory improvements to make the program more viable.

HPDC Seeking NPS Participation in White House Initiative

At a recent meeting with staff from the White House Domestic Policy Council's Rental Housing Working Group, NH&RA's Historic Preservation Development Council (HPDC) proposed incorporating key National Park Service staff involved in overseeing the historic rehabilitation tax credit in discussions to improve, streamline, and create more synergies across the nation's affordable rental housing programs. A meeting in Washington, D.C. in October, convened by the White House Domestic Policy Council and attended by NH&RA, gathered together officials from the Obama Administration, HUD, and a number of other federal agencies along with academics and rental housing program stakeholders. A number of working groups and sub-groups have been set up and are moving forward.

HPDC is seeking to have the National Park Service involved in this effort since the federal historic rehabilitation tax credit is commonly used as a funding source for many affordable rental housing projects.

NCAHMA Reactivates Advisory Group

The National Council of Affordable Housing Market Analysts (NCAHMA) has re-activated its Advisory Committee, which helps provide input and guidance on market study and underwriting issues. Members include representatives of housing finance agencies, institutions, developers, syndicators, tax credit investors, and others.

In other developments, NCAHMA provided its second set of comments to the National Council of State Housing Agencies about NCSHA's current effort to review and possibly revise its existing "recommended practices" for allocation and underwriting of low-income housing tax credits by state housing credit agencies.

In addition, NCAHMA is putting together a white paper to provide to the Rental Housing Policy Work Group established by the White House Domestic Policy Council in connection with the initiative to review and improve upon federal rental housing policies. TCA

Texas Court's Fair Housing Decision Raises Wider Scrutiny of Tax Credit Allocation Policies

By Harry J. Kelly, Nixon Peabody LLP

Photo by Nixon Peabody LLP

Harry J. Kelly

For years, developers and investors have known that in order to qualify for low income housing tax credits ("LIHTCs"), owners have to show that their units are "available to the general public." According to Treasury Reg. §1.42-9(a), this means that, among other things, the units must be rented in a manner that is consistent with HUD rules implementing the Fair Housing Act ("FHAct").

But what about the state housing finance agencies that allocate those tax credits – what are their obligations under the FHAct? In late September, a Federal district court in Texas attempted to answer that question in Inclusive Communities Project, Inc. v. Texas Dept. of Housing and Community Affairs, No. 3:08-CV-0546-D, 2010 U.S. Dist. LEXIS 102777 (N.D. Tex. Sept. 28, 2010). Inclusive Communities is one of those decisions that law professors love, because it turns on obscure rules concerning shifting burdens of proof, permissible inferences drawn from the evidence, and the conflicting procedural requirements of different motions under the rules that govern litigation in Federal courts. Sifting through these procedural issues, however, the Inclusive Communities decision outlines a new sort of fair housing case that challenges decisions by state housing finance agencies – and potentially, owners and developers of LIHTC properties – concerning where tax credit properties are located and how tax credits are allocated.

The Decision

The plaintiff in the Inclusive Communities case was a Texas-based organization that assists low-income families to find housing in Section 8 and tax credit properties. Among other things, it alleged that the Texas Department of Housing and Community Affairs (the "Agency") disproportionately approved more LIHTC developments in low income neighborhoods and, conversely, disproportionately denied LIHTC applications in majority Caucasian neighborhoods. Based on these and similar findings, the Texas court concluded that the plaintiff had satisfied the relatively modest requirements of establishing a prima facie case for a violation of the FHAct. More disturbingly, the court – drawing on inferences from this statistical evidence, as well as other policy actions by the Agency and statements made by Agency officials – concluded that the plaintiff had shown that the Agency also established a prima facie case for intentional discrimination under the post-Civil War civil rights statutes, 42 USC §§ 1982 and 1983.

Perhaps unavoidably, the Agency did not significantly contest these statistical findings that allowed the plaintiff to make out a prima facie discrimination case. Instead, given the prima facie finding of discrimination, the burden shifted to the Agency to show that its allocation policies had a "compelling government interest." Op. at *9. To carry this burden, the Agency relied on portions of Section 42 of the Internal Revenue Code, such as § 42(m)(1)(B), which requires each state housing finance agency's Qualified Allocation Plan ("QAP") to give preference to projects that serve the lowest income tenants and that are located in HUD-designated "qualified census tracts" that also are impacted by high poverty rates. Essentially, the Agency said that it was following Federal orders in allocating tax credits, and because minority status and low income are highly correlated, it was virtually unavoidable that tax credits would be concentrated in minority neighborhoods and not in Caucasian ones.

The Texas court rejected this defense, at least with respect to the Agency's summary judgment motion. Unfortunately, the opinion did not detail the arguments presented by the Agency about why Section 42 compelled its allocation outcomes, and the court denied the Agency's motion on this defense with little explanation, saying succinctly (at *10) that the Agency had "failed to establish without genuine dispute that [the Agency] cannot comply with §42 and the [FHAct]."

Reading between the lines, it appears that the court felt that the Agency had not demonstrated that there were less discriminatory methods that could have been used to satisfy the requirements of both Section 42 and

Texas, continued on page 27

Texas, continued from page 26

of the FHAct. Certainly, in terms of teachable lessons for the Agency and other state housing finance agencies, it would have been helpful if the court had detailed more fully both the Agency's explanation of the impact of Section 42 on its decision-making, as well as the court's reasons for finding those arguments unpersuasive. In any event, this defense is saved for trial, along with the plaintiff's claim that the invocation of Section 42 is only a pretext for the Agency's alleged discriminatory practice.

As noted, the procedural issues in the case are knotty, and the resolution is hardly pellucid. This is one of those moments when a box score might be useful: The plaintiff moved for partial summary judgment, seeking determination that it had standing and that it had demonstrated a prima facie of racial segregation. The Agency moved for judgment on the pleadings and summary judgment, claiming that the plaintiff lacked standing and that it was not entitled to relief on its discrimination claims. Granting the plaintiffs' motions and denying the Agency's motions, the court found that the plaintiffs have standing, and that they established their prima facie cases on discrimination under the FHAct and the civil rights statues. With respect to the Agency's defense that its allocation policies were compelled by Section 42, the court denied the Agency's summary judgment motions, concluding that there were factual issues that precluded entry of judgment. *See* Op. at *10 (the Agency has "failed to establish without genuine dispute that [the Agency] cannot comply with both § 42 and the [FHAct]") and *11 (with respect to the civil rights laws, the plaintiff "has presented sufficient evidence that [the Agency's] proffered reason [under Section 42] is pretextual to require a trial"). In the end, the posture of the case is that the plaintiff has made out the basic elements of its discrimination claims, but the Agency has preserved for trial the question of whether, to the extent its allocation policies were discriminatory, that outcome was compelled by Section 42's anti-poverty requirements. Reading between the lines, it seems that the court is skeptical that Section 42 actually required the Agency to allocate LIHTCs in a way that, in the court's view, was discriminatory. It will be interesting to see whether the parties attempt to settle their claims or go to trial, and if they go to trial, to see what sort of evidence the contestants offer to support their respective positions.

What Does It Mean?

The Inclusive Communities opinion is not the last word in this matter, because as noted the court has reserved several issues – including the "compelling government interest" defense – for trial. Nevertheless, the decision represents a significant challenge to the way in which state housing finance agencies have allocated tax credits and makes clear that those agencies' decisions are subject to fair housing scrutiny for potential discriminatory results. Thus, it raises several serious questions for state housing finance agencies, developers and investors, including the following:

- To the extent that fair housing questions have arisen in the LIHTC program, they typically relate to whether the developer/owner/manager is complying with the "for use by the general public" requirement of Treasury Reg. §1.42-9. There has been comparatively little scrutiny of the operations of state housing finance agencies, and whether their allocation policies, over the life of the LIHTC program,

Texas, continued on page 28

Texas, continued from page 27

may have inadvertently perpetuated racial segregation as a result of pursuing otherwise legitimate anti-poverty goals. Thus, Inclusive Communities may lead IRS to take a more detailed view of how tax credits are being allocated, to determine whether current policies have had a discriminatory effect and whether other steps could be taken to reduce that effect.

- Although Inclusive Communities focused on QAPs issued by state housing finance agencies, it is not inconceivable that the same approach could be used against developers to argue that their development decisions resulted in discriminatory development plans.
- An argument could be made that, if the state housing finance agency's allocation process was flawed, tax credits allocated pursuant to its QAP may also be subject to a fair housing challenge. Treasury Reg. 1-42.9(a) states, however, that a unit is for use by the general public "if the unit is ***rented*** in a manner consistent with housing policy governing non-discrimination" issued by HUD. Emphasis added. Thus, the rule focuses on rental practices, not on the allocation process, and should not be used after the fact to invalidate tax credits already awarded, solely on the basis of a fault in the allocation process.
- Certainly, Inclusive Communities should set off alarms among state housing finance agencies, encouraging them to examine their own statistics and to determine whether changes in their QAPs should be made to reduce the potential for discriminatory impacts (for example, by giving additional points to locational factors that tend to desegregate tax credit housing). State housing finance agencies should be particularly concerned about low levels for approvals of tax credit applications in majority Caucasian areas, since the Texas court seemed particularly upset that the Agency had disproportionately disapproved such applications. Since it was relatively easy for the plaintiff in this case to demonstrate a discriminatory effect – the Texas court noted (at *10) that the Agency "conceded . . . that [the plaintiff] has established a prima facie case" – many state agencies may find that their own allocation practices have had a similarly discriminatory effect that may make them targets for similar litigation. TCA

Harry J. Kelly is a Partner of Nixon Peabody LLP in the firm's Washington, D.C. office. He may be reached at 202-585-8712, hkelly@nixonpeabody.com

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IRS Provides New Guidance on Physical Conditions

The Internal Revenue Services has provided additional guidance regarding physical suitability requirements for low-income housing tax credit projects, in a new Chief Counsel Advisory (No. 201042025) released October 22.

The tax code provides that a unit may not be treated as a low-income unit unless it is suitable for occupancy. Suitability for occupancy is determined under IRS regulations taking into account local health, safety, and building codes. Housing credit agencies must make periodic on-site inspections of low-income buildings and low-income units as part of their compliance monitoring responsibilities.

The new guidance says that the suitable for occupancy requirement "does not have to be determined on a unit-by-unit basis if the facts exist that the condition of the exterior components of the building (e.g., wall, roof, etc.) are so poor as to lead to a factual determination that all the units in a building are not suitable for occupancy."

The guidance also says that a housing credit agency may use HUD's uniform physical condition standards (UPCS) in an on-site inspection, and that a violation of these standards alone is sufficient for a finding of a violation of the suitability for occupancy requirement. But the guidance also makes it clear that HUD's UPCS do not supersede or preempt local health, safety, and building codes. And it further notes that a taxpayer, in response to an IRS finding of a violation, may raise an affirmative defense by proving that project conditions conform to local codes, even if the UPCS is violated. "Under these circumstances, the local law would control as respects the violation itself." TCA

(http://www.irs.gov/pub/irs-wd/1042025.pdf)

Doing More With Less

HUD Employs Lean Processing to Expedite FHA Section 232 Mortgages

Two years after its launch by the U.S. Department of Housing and Urban Development (HUD), so-called Lean Processing of Federal Housing Administration (FHA) Section 232 health care mortgages has produced a number of benefits. But a large backlog of pending applications is preventing this initiative from reaching its full potential.

A look at how Lean Processing works in the Section 232 program is useful, since HUD has begun incorporating some core elements of Lean Processing in its FHA multifamily mortgage insurance programs. Examples are draft lender's and underwriter's narratives for FHA multifamily applications recently circulated by HUD to lenders.

Background on 232 and Lean

Under the Section 232 program, FHA insures mortgages originated by approved lenders to fund housing facilities for the frail elderly: nursing homes; assisted living projects; and board and care homes. Section 232 loans can finance the purchase, refinance, new construction, or substantial rehabilitation of a project, or a combination of these uses (e.g., acquisition/rehab). Mortgages are non-recourse, fixed-rate with terms of up to 35 years (42 for new construction or substantial rehab).

In November 2007, HUD heard from customers that Section 232 was a good product but that processing of applications for FHA mortgage insurance took too long and was inconsistent. The Department then began efforts to streamline, improve, and speed the underwriting and processing of Section 232 applications.

At the time, about 200 (full-time equivalent) HUD staffers spread throughout the U.S. processed about 200 Section 232 FHA heath care loans a year.

William Lammers, the current Acting Director of the Section 232 program at HUD, and a former CFO in the hospital field, says, "What we determined was that for our offices to do that [same volume], with a much more limited staff, we needed to employ a much more efficient process and a much more standardized kind of a process, centrally managed. So we looked at and became aware of Lean Processing that was used successfully by many major companies."

William Lammers

Private consultant Maria Stopher trained HUD staff in the summer of 2008 in "Lean Thinking" – a concept first used by Toyota to improve its manufacturing processes. The basic tenets are to perform tasks more efficiently by greater standardization and use of streamlined processes.

HUD shifted responsibility for the Section 232 program to the renamed Office of Healthcare Programs, which already ran the FHA Section 242 hospital mortgage insurance program. In addition, it went to a virtual centralized management of the 232 program, utilizing outstationed staff from HUD Headquarters in Washington, D.C. Previously, the program was run somewhat autonomously in HUD's Hub offices and 50 field offices, many of which had individual nuanced ways of handling, underwriting, and processing Section 232 loan applications, using staff that worked on other kinds of FHA loans as well. Under the Lean Processing system, Section 232 applications are now underwritten and processed by about 60 specialists working only on this product and located in many offices, including Washington, D.C. and a number of other HUD offices.

"Maria Stopher…trained us initially to implement Lean Processing of applications for Section 232," says Lammers. "And we then put that in place….We standardized all of the procedures and processing – the paperwork, etc. – and then required more of the lenders and the groups submitting documents, to be more standardized in what was submitted. With the promise that if they did that, we would do a much more standardized processing and evaluation and underwriting of all the documents."

The objectives of Lean (sometimes written as LEAN) are greater consistency, uniformity, and speed in the underwriting and processing of Section 232 applications and greater certainty of execution.

Lean, continued on page 30

Lean, continued from page 29

Lean Processing was fully phased in for all Section 232 applications starting March 1, 2009, replacing HUD's two previous, regular processing channels for 232 mortgages: Multifamily Accelerated Processing and Traditional Application Processing.

In addition to central management and the use of specialized FHA staff, other beneficial features of Section 232 Lean Processing include:

- Standardized documents for lenders and HUD staff, including a lender's narrative submitted to HUD with each application, templates for lenders to use in assembling application packages, and a checklist for FHA staff to use to make sure that packages are complete.

- A simpler valuation process, allowing appraisals to be performed by any approved market appraiser.

- A single loan committee at HUD.

- The start of HUD's legal review when the firm application is submitted.

- The separation of pending Section 232 applications awaiting FHA underwriting and processing – piled up in a central "queue" – into five different processing "lanes," including a "green lane" for priority processing. The green lane is for applications that meet certain requirements, including a loan-to-value below a certain level and no problems with the property. Other lanes are for projects seeking refinancing of an existing FHA mortgage, for other projects seeking refinancing, for new construction/substantial rehabilitation, and for portfolios of properties.

Favorable View

Columbus, Ohio-based Red Mortgage Capital, LLC, a major originator of Section 232 mortgages, is positive about Lean Processing. "It's a much better process in every way," says Managing Director Scott Moore. "It's more work for lenders, but it's better because it's very uniform. We know exactly what we need to do each time; borrowers get accustomed to what they need to provide each time….[HUD] has essentially delegated more of the underwriting and review to the lenders."

Scott Moore

The shift to Lean Processing has reduced the time it typically takes HUD to underwrite and process a Section 232 application – once it begins the process. But the reduction in HUD staff and the much greater popularity of the Section 232 program with borrowers – Moore said the current all-in fixed interest rates are at or very near historic lows – means that the volume of applications and the size of the "queue" have grown. As of September 30, 2010, the end of Fiscal Year 2010, the queue numbered 327 applications, up from 60 a year earlier.

"Since the Office of Healthcare Programs assumed responsibility for the Section 232 Program, the total number of applications received in the Lean Processing program in [FY] '09 was 271," says Lammers. "In [FY] '10 it was 758." In FY 2009, HUD issued 132 commitments for FHA insurance for Section 232 loans, and 88 loans closed. In FY 2010, the figures were 318 commitments issued and 309 loans closed, under Lean Processing.

However, since the Office of Multifamily Housing continued to process Section 232 applications in the existing pipeline at the time of the transfer of responsibility for new applications to the Office of Healthcare Programs under Lean Processing, in FY 2009, a combined total of 294 Section 232 loans nationwide received firm commitments, compared with the corresponding combined total of 358 for FY 2010.

Of the FY 2009 total, 203 loans were for nursing homes (215 in FY 2010) and 91 for assisted living facilities (143 in FY 2010). The most popular use was loans for refinance/purchase (233 in FY 2009, 307 in FY 2010), followed by new construction/substantial rehab (61 in FY 2009, 51 in FY 2010).

Lammers says HUD is seeing a "significant increase" in Section 232 loans for portfolio financings. For example, Red Mortgage Capital, LLC, recently provided FHA LEAN 232/223(f) acquisition financing to Keystone Our House, LLC for a 27-facility portfolio of assisted living and memory care properties in Minnesota and Wisconsin.

Lammers hopes that with additional improvements HUD can cut the turnaround time for Section 232 applications even more. TCA

Crafting the Perfect State Tax Credit

With funding gaps for new tax credit projects quite common, state tax credits are more important than ever in providing the extra juice to get deals to closing. But state tax credits vary widely in their structure and appeal to developers and investors, with significant pricing differences that greatly alter the amount of equity that they generate for real estate projects.

So what is the recipe for the perfect state tax credit?

At a National Council of State Housing Agencies' conference earlier this year, tax credit professionals provided their "wish list" of the ideal traits of state tax credits to make them appealing and produce the greatest, most efficient subsidy for projects. While many of their comments related to state housing tax credits, which are often paired with the federal low-income housing tax credit, some of their suggestions also have applicability to other kinds of state tax credits as well, such as state historic tax credits. In fact, more than 30 states have their own state historic tax credit or tax incentive for historic rehabilitation, and many projects pair state historic tax credits with federal historic tax credits and sometimes also with federal housing credits.

At least 13 states offer state housing tax credits.

The speakers' suggestions are timely. In the past year, a number of state legislatures and/or governors have tried – some successfully, some not – to cut back the costs of various state tax credit programs, particularly historic tax credits, by imposing or reducing annual volume caps or other means.

Defensive Move

Washington, D.C. attorney Jerome Breed, of the law firm Bryan Cave LLP, and Jeanne Peterson, of Reznick Group, noted that identifying ways to improve an existing state tax credit to make it more attractive and efficient can help protect a program against budget-cutting forays. "Legislators are looking [for revenues] under every nook and cranny," said Peterson. The challenge, Breed noted, is to "try to figure out, how do we make credits more efficient in the state, so that we can get the same subsidy to the project with a smaller amount of credit and a lower cost."

Jerome Breed

According to Breed, an attractive state tax credit:

- **Is "bifurcatable" from the federal tax credit.** Permitting the state and federal credits to be sold to different investors makes a state tax credit easier to sell and usually fetches higher pricing from investors and therefore more equity for the developer.

- **Targets a wide range of prospective investors.** "Make sure that your credits are able to be used by insurance companies and banks and corporations, so that all the players can play in the market."

- **Has flexibility.** State tax credits are usually either "allocated" or "certificated." With allocated credits, the party claiming the tax credit generally must be part of a limited partnership or limited liability company (i.e. a limited partner or member) that owns

State Credits, continued on page 32

State Credits, continued from page 31

the project qualifying for the credit. A certificated credit, on the hand, is essentially a piece of paper that can be bought or sold by anyone; the holder doesn't have to be a limited partner or LLC member. Each format has its pros and cons, but certificated credits generally command higher pricing from investors in cents per credit dollar.

Peterson recommended:

- Structuring the state tax credit so that it can either be both "allocated" or "certificated" at the choice of the holder of the tax credit, and transferable to another party so that it can be re-sold.
- A shorter time period. California's state housing tax credit, for instance, is claimed over just four years rather than the 10 for the federal housing credit. "The state tax credit doesn't have to follow the length of time that the federal credit does."
- Allowing the state tax credit to be paired with tax-exempt bonds.
- Precluding any state income tax liability from the state tax credit.
- Allowing unused amounts of state tax credit to be carried back by investors to previous tax years, or carried forward to future tax years, to enable full use of the tax credit if it can't all be claimed in the current tax year.

Peterson conceded that some of her suggestions may be politically impossible to obtain for a new or existing state tax credit. "But any, all, or a combination of them could certainly enhance the value of the credit and the amount that investors are willing to pay for it," she noted.

Jeanne Peterson

Peterson cited Missouri's and Georgia's housing tax credit programs, which can be bifurcated from the federal credit, as examples of state credits that have an active market.

Similarly, Boston syndicator Peter Sargent, of the Massachusetts Housing Investment Corporation, said his state's housing tax credit has been successful because of its five-year term and because it is bifurcatable, transferable, and can be claimed by multiple types of institutional investors. "We are seeing corporations and insurance companies wanting them," he noted, adding that some investors only want the state housing credit. But Sargent indicated that one turnoff for investors is the state tax credit's 15-year recapture period.

There are also some state historic tax credits that can be bifurcated or separated from federal tax credits.

Additional Traits

Breed also said that a state program should provide a large enough tax credit to make it worthwhile for developers and investors to pursue, and that there must be certainty that the program will be around in the future.

"If the program is there, and then not there, that's a problem," he said. "If there isn't certainty, developers aren't going to assume the use of [the state tax credit] when they plan a new project because they can't depend on it."

According to Breed and Peterson, state tax credit programs must have features that assure that state tax credit investments will be respected as having economic substance for federal tax purposes. Breed also recommended a limited recapture period for a state tax credit to make it attractive.

Finally, Breed encouraged states to be creative in the design of a state tax credit. As an example, he praised North Carolina's state housing tax credit program, which actually doesn't provide a tax credit but instead a 30-year interest-free loan to a developer. TCA

Park Service Seeks Comments on Proposed Rule

The National Park Service is soliciting public comments by December 14 on a proposed rule to streamline its existing regulations on procedures for obtaining preservation certifications for the rehabilitation of historic structures. It would remove outdated references to the federal tax code; provide that reviews of applications for certification are conducted by NPS' Washington office; remove the certification fee schedule from the regs; and allow for administrative review of appeals of certain denials.

(http://edocket.access.gpo.gov/2010/pdf/2010-25853.pdf) TCA

A Smoking Good Idea

Old Cigar Factory Being Transformed Into Neighborhood Services Hub

Family Wellness Center, Detroit, Michigan
Rendering by Steve Pariseau, Shelter Design LLC

In a multi-ethnic corner of recession-ravaged Detroit, a local nonprofit is renovating an historic building originally used as a cigar factory into a modern health and services center for low-income families. This is an example of the power and flexibility of the federal new markets tax credit program to lift up underserved communities.

Southwest Housing Solutions Corporation (SWHS) began development of the Family Wellness Center in March. "We hope to move our first tenants in December, and to have the entire project occupied by February 2011 for the remaining tenants," says project manager Janay Mallett, of SWHS.

Janay Mallett

SWHS is one arm of parent Southwest Solutions, a nonprofit that through different branches provides a multitude of services benefitting low-income individuals and families, including the homeless, in Southwest Detroit, such as health care, housing, and counseling.

Located on Michigan Avenue, a main thoroughfare, the Family Wellness Center will be convenient to public transportation and shopping and a Social Security office across the street.

Variety of Service Providers

The four-story facility, once renovated, will be filled by a variety of service-providing tenants: Children's Network, a nonprofit child-care provider; Mom's and Babes Too, which assists low-income expectant mothers and offers supplemental nutrition for infants and maternal infant health care; Covenant Community Care, which will operate a dental and primary medical care clinic and pharmacy serving low-income and market-rate patients; Life Directions, a nonprofit that provides counseling for troubled youth; Madonna University, an educational institution primarily serving single women wishing to begin or resume a college education; and Southwest Counseling, a sister agency to SWHS that will operate two programs on site (Child and Family, Juvenile Justice).

The Family Wellness Center is the nonprofit's first NMTC project, and required considerable time to

Detroit, continued on page 34

Detroit, continued from page 33

secure all of the funding and structure the deal. "This project had 13 to 14 to 15 sources of financing ultimately," says Mallett.

The National Development Council's community development entity (CDE) provided the NMTC allocation for the project, which is in a highly distressed census tract. David Trevisani of NDC said his group was attracted to the deal because of the sponsor, the characteristics of the project, and its location.

JPMorgan Chase is the new markets equity investor. Foss and Company is providing additional equity from the purchase of the state historic and brownfields tax credits and federal rehabilitation tax credits. There were also federal community development block grant dollars from the city of Detroit and grants from the United Way for Southeastern Michigan, the National Trust for Historic Preservation and the John S. and James L. Knight Foundation, the Kresge Foundation, NeighborWorks America, Community Foundation for Southeast Michigan, Wayne County, the Michigan State Housing Development Authority, and the Local Initiatives Support Corporation (LISC). Covenant Community Care also contributed funding. Additional lenders/investors were LISC, Detroit Investment Fund, Living Cities, and NeighborWorks Capital.

The heavy use of non-traditional sources to create soft, leveraged debt for the project is illustrative of a current challenge – the difficulty in finding conventional leveraged loans for NMTC projects. Mallett was turned down by several banks that had previously made loans for the nonprofit's projects.

Non-traditional funding was also necessary because the project – with a total development cost of $11.2 million – was only appraised (after completion) at $3 million. "That speaks to the fact that there's a lot of office vacancies in the metro area, as well as a depreciation of costs for office space," says Mallett.

Unlike stereotypical perceptions of Detroit, the neighborhood around the project site isn't marred by boarded-up vacant buildings and houses, but rather is a vibrant multi-ethnic area with a large immigrant population and many grocery stores, restaurants, and small shops.

Former Cigar Factory

The building itself reflects a key but little-known part of Detroit's industrial past – the tobacco business. The structure, designed by Albert Kahn, the foremost American industrial architect of the time, opened in 1910 as the new quarters for the San Telmo Cigar Manufacturing Company, which began in 1898 and produced popular brands such as the Court Royal, Joan of Arc, and Robert Bacon. Dating back to pre-Civil War, Detroit was once a major center for the manufacture of cigars and cut plug tobacco, using high-quality tobacco from nearby Ontario. This continued until the early decades of the 20th century, when the growth in the popularity of cigarettes – fostered by the perfection of a cigarette production machine – and the preference for tobacco from Virginia and North Carolina contributed to the demise of the cigar industry in Detroit.

"This was one of the three largest cigar-making companies in the city, and it's the last remaining of those three buildings," says Detroit native and Washington, DC attorney David Schon, of Nixon Peabody LLP, who structured the transaction.

Photo by Nixon Peabody LLP

David Schon

The original San Telmo cigar factory building, plus an addition, comprise a designated local historic district. SWHS had to win approval of the rehab plans for its project from the State Historic Preservation Office and the city's historic district commission in order to make the project eligible for the state historic tax credit. The project will also utilize the federal 10% rehabilitation tax credit, which isn't very often claimed compared to its standard brethren 20% federal historic tax credit, but is easier to obtain since it doesn't require getting Part 1, Part 2, and Part 3 approval from the National Park Service. The Detroit project is believed to be the first to combine the NMTC and 10% federal rehab credit.

SWHS purchased the site from a local businessman who had operated an office equipment store and showroom in the building.

Collaboration Fueled Success

Mallett says many different players came together to make the Family Wellness Center project possible: funding partners, city, state, and historic officials, various practitioners, and others. "I've been touched by the number of collaborators that came to the project, not only to help on the financing end, but to help on getting the project approved," she noted. "This is what it takes to get projects done."

Detroit, continued on page 35

Detroit, continued from page 34

Mallett expects SWHS to use the new markets credit again at some point, noting it was the key piece that made the Family Wellness Center possible.

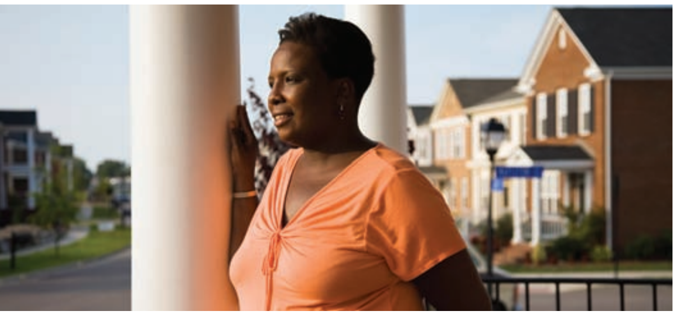
"There's always obstacles to development in very difficult to develop areas," she says. "But when you combine that with the last six years of recession in our metro area, plus the global and national financial meltdown, without the new markets tool this thing would not have gathered any legs. I'd probably easily be into 10 to 15 years of trying to raise funds." TCA

OCC Newsletter Focuses on Community Development Investments

The fall edition of the online newsletter of the Office of the Comptroller of the Currency, *Community Developments Investments*, provides a guide for national banks seeking a wide range of community and economic development investments under the public welfare investment authority.

(http://www.occ.gov) TCA

The greatest rewards come from helping others.



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People in the News

Anthony Marchetta is the new executive director of the New Jersey Housing and Mortgage Finance Agency. Most recently, he was Vice President of LCOR Inc., managing multifamily and mixed-use projects in the Mid-Atlantic region.

Margaret Lineberry is the new executive director of the Missouri Housing Development Commission. Previously, she practiced law with the Lineberry Law Firm and Shook, Hardy & Bacon, and served as in-house counsel to the former Butler Manufacturing Company.

Kenneth M. Donohue has joined Reznick Group, a national CPA firm, as a principal in the company's Government Services group. He was previously Inspector General at the U.S. Department of Housing and Urban Development.

Robert E. Cronin has joined Reznick Group in its Chicago office as a principal in the firm's Valuation and Transaction Advisory Group. He was previously at CBIZ Valuation Group.

Rick Slagle has joined Raymond James Tax Credit Funds, Inc., a subsidiary of Raymond James Financial and syndicator of affordable housing, as Director of Acquisitions, responsible for property acquisitions in Virginia, West Virginia, Pennsylvania, Maryland, Delaware, and Washington D.C. He previously was president and founder of Development Capital Advisors.

Ted Wartell has been appointed as Director of Community Affairs Policy at the Office of the Comptroller of the Currency. He was previously at Fannie Mae. TCA

State Roundup

Ohio Awards First State New Markets Tax Credits

The Ohio Department of Development (ODOD) recently announced the first awards of the state's new markets tax credits, providing $10 million in allocation authority to four Ohio entities to spur economic investments. The first round awards under Ohio's program, which is patterned after the federal new markets tax credit program, will spur at least $25.6 million in economic investments.

(http://www.development.ohio.gov/newsroom/2010PR/October/8.htm)

Florida Housing Launches Green Building Web Resource

The Florida Housing Finance Corporation has launched a Green Building home page to provide information and resources on green building to the affordable housing development community. The site has information on Florida's green building priorities, costs and benefits of green building, opportunities for green certification programs, and other green development resources.

(http://apps.floridahousing.org/StandAlone/GreenBuilding/)

New York Announces Availability of Housing Funds for 2011

New York State Homes & Community Renewal has announced the availability of $70 million in housing funds, including housing tax credits, for 2011. The agency expects to have available about $25 million in federal low-income housing tax credits and about $4 million in state low-income housing tax credits, plus $29 million in Housing Trust Fund monies and $12 million in federal HOME funds. Applications for early round projects must be submitted by January 12. All other Unified Funding Capital applications, including for tax credits, are due by February 9.

(http://nysdhcr.gov/Funding/UnifiedFundingMaterials/2011/)

Kentucky 2011-2012 QAP Is Final

The final 2011-2012 qualified allocation plan (QAP) for the Kentucky Housing Corporation's low-income housing tax credit program has been approved by the agency's board and signed by the governor. One funding round is planned next year with an application deadline of 3/1/11.

(http://www.kyhousing.org/uploadedFiles/Housing_Production/Rental_Production_Programs/FinalQAP11-16-2010.pdf)

Oregon Establishes New Revolving Loan Fund

Oregon Housing and Community Services has established a new $300,000 revolving loan fund that offers loans to fund capital needs assessments of developments that have life-safety issues or that have expiring federal subsidy contracts. Applications are being accepted.

(http://www.ohcs.oregon.gov/OHCS/HD/MFH/pdfs/2010/09_29_2010_CNA_Predev_Loan.pdf)

Colorado Approves 2011 Allocation Plan

The Colorado Housing and Finance Authority has approved its 2011 QAP for its low-income housing tax credit program and sent it to the governor for his signature. Two funding rounds are planned for 2011. Letters of intent are due by 2/1/11 and applications by 3/1/11 in the first round; in the second round the dates are 6/1/11 and 7/1/11. The new QAP and a summary of changes have been posted by CHFA.

(http://www.chfainfo.com/multifam/multifamily_developers/LIHTC%20allocation/LIHTC%20allocation.icm) TCA

Capital Briefs

HUD Publishes Proposed Rule for Housing Trust Fund

The U.S. Department of Housing and Urban Development (HUD) is inviting public comments by December 28 on a proposed rule for the Housing Trust Fund, which was authorized by the Housing and Economic Recovery Act of 2008 but has not yet been capitalized. The purpose of the HTF is to provide grants to state governments to increase and preserve the supply of rental housing for extremely low- and very low-income families, including homeless families, and to increase homeownership for extremely low and very low-income families. The proposed rule details eligible uses and recipients of HTF monies, how HTF dollars are to be allocated, income targeting requirements, and other areas.

(http://edocket.access.gpo.gov/2010/pdf/2010-28253.pdf)

IRS Announces 2011 Credit, Bond Volume Caps

New IRS Revenue Procedure 2010-40 specifies the dollar volume caps for each state for low-income housing tax credits and tax-exempt private activity bonds for calendar 2011. The credit cap for each state will be the greater of $2.15 multiplied by the state's population or $2,465,000. The bond cap will be the greater of $95 times the state's population or $277,820,000. The precise amount of each state's credit and bond caps won't be known until the IRS transmits updated state population estimates in early 2011. The notice also provides that the minimum amount of per-unit rehab expenditures required in 2011 to be treated as a separate new LIHTC building will be $6,100.

(http://www.irs.gov/pub/irs-drop/rp-10-40.pdf)

IRS Says No 2010 National Pool Tax Credit Allocations

There will no 2010 national pool allocations under the low-income housing tax credit program, according to new IRS Notice 2010-74. This is because no state housing credit agencies returned unused 2009 housing credits; nearly all states exchanged a portion of their 2009 credits for cash under the Section 1602 credit exchange program.

(http://www.irs.gov/pub/irs-drop/n-10-74.pdf)

Rural Housing Service Issues NOFA for Loan Fund Program

USDA's Rural Housing Service has announced the availability of $14 million under a multifamily housing preservation revolving loan program, and is soliciting applications by January 10, 2011. The initiative offers loans to eligible nonprofit organizations and state and local housing finance agencies to operate revolving loan funds to provide assistance to preserve and revitalize existing rural multifamily rental and farm worker housing projects financed under the Rural Development Section 515, 514, and 516 programs.

(http://edocket.access.gpo.gov/2010/pdf/2010-28253.pdf)

HUD Issues Operating Cost Adjustment Factors for 2011

HUD has published the operating cost adjustment factors (OCAFs) for 2011, effective February 11, 2011, for the 50 states, District of Columbia, Puerto Rico, and U.S. Virgin Islands. OCAFs are percentage factors used to annually adjust Section 8 rents for covered projects.

(http://edocket.access.gpo.gov/2010/pdf/2010-28170.pdf)

Treasury Issues Guidance Regarding Section 1603 Projects

The U.S. Treasury Department has issued guidance to clarify the requirements that must be met for sponsors of a renewable energy product not placed in service by December 31, 2010, to qualify to apply for a Section 1603 cash grant in lieu of the investment tax credit. An applicant must show that physical construction has begun by year-end or else meet a 5% safe harbor; Treasury provides details on both.

(http://www.ustreas.gov/recovery/1603.shtml) TCA

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