TaxCreditAdvisor

News, Ideas and Information for Tax Credit Developers and Investors

Issue Theme: Site Selection & Market Analysis

States Agencies Take Steps to Activate TCAP, Exchange Programs

STATE AGENCIES COULD make the first awards of stimulus act funds to stalled low-income housing tax credit (LIHTC) projects as soon as this month, according to sources.

Since the May 4th issuance of critical initial federal guidance for the new "TCAP" and credit exchange programs, state housing credit agencies (HCAs) have been busy taking the steps necessary to access the new dollars and to finalize plans for their use.

In many respects, LIHTC industry participants are having to learn about, ramp up, and figure out how to use a brand new housing program

Credit,
continued on page 29

$5 Billion in Extra Funds Promise Enhanced Retrofit Opportunities

OWNERS OF OLDER affordable rental housing projects appear likely to have access soon to a new windfall of federal "weatherization" funds to help pay for energy-efficiency improvements to their properties.

The American Recovery and Reinvestment Act (ARRA) provides a massive extra $5 billion for the Weatherization Assistance Program (WAP) run by the U.S. Department of Energy (DOE). In addition, a new agreement between DOE and the U.S. Department of Housing and Urban Development (HUD) lays the groundwork for greater access to WAP funds for affordable multifamily rental projects.

Under the program, federal appropriations are allocated annually by

Weatherization,
continued on page 6

Affordable Senior Project Weathers Storm to Get Built

DEVELOPER Shelter Development LLC had a great idea for a new affordable housing project for seniors near Baltimore, and had crafted a finance structure with multiple tax and financing pieces. But then the tsunami rocked the low-income housing tax credit (LIHTC) equity market, and it was back to the drawing board. However, through some creative twists and the cooperation of its partners, Shelter revised its original plans to restore the project to feasibility and moved ahead to build it.

The 80-unit development, Park View at Emerson, opened in January

Emerson,
continued on page 27

Inside This Issue

Low-Income Housing Tax Credit 3
Site Selection and Market Analysis 11
Green Building 19
Historic Rehabilitation 23
New Markets Tax Credit 25
Washington and State Update 26

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

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

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Editorial office at same address as above.

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IRS Addresses Sub-Metered Projects

THE INTERNAL REVENUE Service has issued a new notice (2009-44) that permits utility allowances for units in sub-metered low-income housing tax credit projects. It amends a July 2008 IRS final rule that substantially revised the LIHTC utility allowance regulations.

The gross rent charged for a rent-restricted tax credit unit must include the dollar amount of a utility allowance for any utility (e.g., water, electric) paid for directly by the tenant, other than telephone, cable TV, or Internet service.

The final rule bars a utility allowance for a unit if the tenant's payment for the utility service is made "by or through" the owner, rather than paid directly by the tenant to the utility company. This change ended the availability of utility allowances for LIHTC units in buildings with utility sub-metering systems. This typically includes a master meter measuring a building's total consumption of a particular utility service like water (billed to the building owner), plus unit-based meters. The latter measure utility consumption by each apartment; the owner or a third party bills the tenant for actual usage.

The new IRS notice says utility costs paid by a tenant based on actual consumption in a sub-metered rent-restricted unit will be treated as paid directly by the tenant.

Special conditions that must be met, in buildings not required to use the utility allowance schedules of the U.S. Department of Housing and Urban Development (HUD) or Rural Housing Service (RHS), to receive a utility allowance for sub-metered rent-restricted units are: (1) The building owner (or agent) can't mark up the utility rate charged to tenants; (2) The owner (or agent) can charge tenants a reasonable administrative fee, generally not exceeding $5 per unit per month; and (3) If the costs for sewerage are (a) based on the tenants' actual water consumption as determined by a sub-metering system, and (b) part of a combined water/sewerage bill, the tenants' sewerage cost will be treated as paid directly by the tenants.

Owners must follow applicable HUD or RHS rules to obtain utility allowances for sub-metered tax credit buildings subject to the HUD or RHS utility allowance schedules.

Compliance expert A. J. Johnson, of A. J. Johnson Consulting Services, Inc., said the new change is beneficial for LIHTC project owners and developers. He said it will enable owners of existing sub-metered properties to resume getting a utility allowance and no longer have to worry about whether the total payment collected from each tenant – for the rent and utility – exceeds the maximum allowable tax credit rent. Johnson said the notice also removes a hurdle to sub-metering new tax credit projects.

(http://www.irs.gov/pub/irs-drop/n-09-44.pdf) ■

Calendar of Events

NCAHMA/Mississippi Home Corp.
Setting the Stage: An Introduction to Market Studies
June 9-10, 2009 • Ridgeland, MS

National Housing & Rehabilitation Association
2009 Summer Institute
July 29-August 1 • Woodstock Inn & Resort • Woodstock, VT

Details at http://www.housingonline.com

Low-Income Housing Tax Credit

Significant New IRS Letter Ruling Addresses the Treatment of LIHTC Offsite Improvements

By Jerome Breed, William Driggers & John Dalton, Bryan Cave LLP

ON APRIL 17, 2009, THE INTERNAL Revenue Service released Private Letter Ruling 200916007 (PLR 200916007), which marks a significant victory for developers of low-income housing tax credit (LIHTC) projects who pay sizable amounts for offsite improvements.

PLR 200916007 concludes that costs of offsite improvements may be included in the eligible basis of qualified low-income buildings, and clarifies a discrepancy between the Internal Revenue Service's treatment of impact fees, which the IRS has stated are includible in eligible basis, and offsite improvements, which the IRS previously had concluded were not includible in eligible basis. Given the similarity between these two types of costs from a practical perspective, the IRS' disparate treatment of these costs had created substantial confusion.

The principal beneficiaries of PLR 200916007 will be developers of LIHTC projects with significant expenditures for offsite improvements, who will now be able to include the costs of such improvements in the eligible basis of the project, thereby increasing the tax credits and investor equity available to the project. For example, developers of projects comprised of multiple buildings or single-family residences to be constructed on unimproved land who are required to build public roads or infrastructure for utilities or governmental services will now be able to include the cost of these improvements in the eligible basis of the project's residential rental buildings, rather than allocating such costs to improvements to land, which would not be includible in eligible basis. The cost of offsite sewer lift stations, water treatment plants, water retention ponds, and similar structures also will be includible in eligible basis under the new ruling.

Impact Fees

In PLR 200916007, the Service first reviewed its analysis of the proper classification of impact fees in LIHTC transactions in IRS Revenue Ruling 2002-9 (Rev. Rul. 2002-9).

Rev. Rul. 2002-9 defined impact fees as "one-time charges that are imposed by a state or local government against new development or expansion of existing development to finance specific offsite capital improvements for general public use that are necessitated by the new or expanded development."

Ruling,
continued on page 4

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Ruling
continued from page 3

In analyzing the issue, the IRS cited two Internal Revenue Code sections and the associated Treasury Regulations. Code Section 263(a) and Treasury Regulations Section 1.263(a)-2(a) provide that no deduction is allowed for any amounts paid out for new buildings or for permanent improvements made to increase the value of any property or estate. Code Section 263A provides that direct costs and a properly allocable portion of indirect costs of real or tangible personal property produced by a taxpayer must be capitalized to the property produced. Indirect costs are defined in Treasury Regulations Section 1.263A-1(e)(3)(i) as all costs other than direct material costs and direct labor costs and provides that indirect costs are properly allocable to property produced when the costs directly benefit, or are incurred by reason of, the performance of production activities.

The IRS also relied on two court cases that apply the foregoing statutory provisions to impact fees. In *Oriole Homes Corp. v. U.S.*, 705 F.Supp. 1531 (S.D. Fla. 1989), a federal district court held that road, educational, regional park, and municipal park impact fees required for the approval and recordation of plats for subdivisions are capital expenditures, to be capitalized as a development cost. In *Von-Lusk v. Commissioner*, 104 T.C. 207 (1995), the Tax Court noted that the cost of obtaining building permits and zoning variances, negotiating permit fees, and similar activities "are ancillary to actual physical work on the land and are as much a part of a development project as digging a foundation or completing a structure's frame. The project cannot move forward if these steps are not taken." The Tax Court held that these costs were indirect costs that were integral to the taxpayer's production of the project for purposes of Code Section 263A and that the taxpayer must therefore capitalize the costs.

Based on the foregoing Code sections, Treasury Regulations, and court cases, the IRS concluded in Rev. Rul. 2002-9 that, where a taxpayer is required by a governmental entity to pay impact fees to compensate the government for the financial impact of the development of new residential housing, such

Ruling, *continued on page 5*

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Ruling,
continued from page 4

impact fees are indirect costs under Code Section 263A that directly benefit, and are incurred by reason of, a taxpayer's production activity and so must be allocated to the new residential buildings.

PLR 200916007 involves a set of facts that differ from those in Rev. Rul. 2002-9 in only one respect. Instead of being required to pay impact fees to the local government to reimburse it for the additional infrastructure costs that would result from the development, the taxpayer was required to build the offsite improvements itself and then dedicate them to the local government. The specific offsite improvements that the taxpayer was required to construct included two-lane streets with curbs, sidewalks, storm water drainage, domestic water inflow improvements, and infrastructure for utilities. Relying on the same authorities that it cited in its analysis of the treatment of impact fees in Rev. Rul. 2002-9, the IRS held that the cost of the offsite improvements must be capitalized into the basis of the residential rental buildings constructed by the taxpayer.

The IRS' conclusion in PLR 200916007 is undoubtedly the correct result and affirms what many in the LIHTC community have long held – that the only difference between an impact fee and an offsite improvement is how the amount is paid. Developers may include these costs in eligible basis in properties that are currently under development or have not yet established eligible basis, and also may include these costs in eligible basis in transactions that are claiming less than the allocated amount of credit due to compliance issues.

Developers may want to seek advice from their tax advisors as to the impact of PLR 200916007 on past transactions.

Partners Jerome Breed and William Driggers and Associate John Dalton are attorneys in the Washington, DC office of law firm Bryan Cave LLP. They work on transactions involving federal housing, historic, and new markets tax credits. Breed also is a member of the Tax Credit Advisor *Editorial Advisory Board. They may be contacted at 202-508-6000, or jerome.breed@bryancave.com, william.driggers@bryancave.com, john.dalton@bryancave.com.* ■

LIHTC Industry Groups Craft New 'Carryback' Proposal

Two industry groups have developed and recruited support for proposed new legislative changes to the federal low-income housing tax credit (LIHTC). The two-part "carryback" proposal is designed to stimulate greater private corporate equity investment in housing credits.

The legislative proposal was developed by the Affordable Housing Tax Credit Coalition and the Affordable Housing Investors Council. Other endorsing organizations so far include the Local Initiatives Support Corporation, Enterprise Community Partners, Inc., Housing Affairs Group, and National Leased Housing Association.

One part of the proposal would permit current investors to better utilize LIHTCs they already hold but can't claim to reduce their federal income tax liability because they don't have sufficient taxable income. This change would permit investors to carry back for up to the past five tax years unused LIHTCs from tax returns they file in 2008, 2009, and 2010, but only to the extent that they make new LIHTC investments. A new LIHTC investment would be a binding commitment to invest in a building for which tax credits are first claimed after 2008. For example, an investor that makes a binding commitment for a new $10 million LIHTC investment in 2009 could carry back, up for up to five years, up to $10 million in accumulated housing credits from its 2008 tax return, which the investor would normally file in the fall of 2009.

The proposal's second part is designed to increase the attractiveness of housing credits to prospective new investors concerned about being able to fully use the tax credits over the next 10 years, the LIHTC benefit period. This change would permit investors yearly to carry back, for up to the past five years, unused tax credits generated by new LIHTC investments made after 2008. Supporters of the new proposal hope to attach it to some sort of major tax bill moving through Congress this year. ■

People in the News

Kevin Bell has joined The Woda Group, LLC as Vice President of Development, in its Crofton, MD office. He has developed affordable rental housing in Maryland for 12 years. Prior to that, he was a practicing attorney and lobbyist. ■

Weatherization,
continued from page 1

formula to states for distribution through local agencies and governments to fund energy-efficiency improvements to homes owned or occupied by low-income households. States craft annual plans on how the monies are to be spent, including eligibility standards for recipients and priorities in the use of funds. The local weatherizing agencies – over 900 nationwide – verify the eligibility of applicant residents, and fund and facilitate installation of the energy improvements. These can include improved insulation, energy-efficient windows, and heating/cooling system upgrades. ARRA raised the general income limit to 200% of the poverty level, and the maximum average expenditure to $6,500 per unit.

Previously, states have generally favored single-family homeowners over renters in the award of WAP funds, typically made as grants. Another barrier for multifamily projects has been the need to verify the eligibility of each tenant household and unit applying for WAP assistance. In most multifamily buildings, at least 66% of the units must be occupied by income-eligible residents to be eligible. Renters also must also get permission for improvements from their landlord.

HUD Secretary Shaun Donovan and DOE Secretary Steven Chu have signed a memorandum of understanding (MOU) that lays the groundwork for easier access by multifamily rental housing owners to WAP funds to help finance energy improvements to their properties.

The memorandum provides that existing income verification procedures used to determine initial and ongoing eligibility of households to live in public housing, HUD-assisted, and low-income housing tax credit (LIHTC) projects will be sufficient to determine eligibility of residents and units in these properties for WAP assistance. Further details will be needed to determine exactly how this will work and what multifamily owners will need to do to access WAP funds under streamlined procedures.

Under the program, federal appropriations are allocated annually by formula to states for distribution through local agencies and governments to fund energy-efficiency improvements to homes owned or occupied by low-income households.

The memorandum, signed 5/6/09, says that within 30 days HUD will give DOE a national list of eligible public housing, HUD-assisted, and LIHTC projects. HUD and DOE intend to issue joint guidance within 60 days, and to hold joint public forums around the country.

The memorandum defines HUD-assisted rental projects as projects that receive HUD project-based Section 8 assistance. Excluded are projects also assisted under HUD's Section 202, 811, 221(d)(3) and (d)(5), and 236 programs.

The goal is for the $5 billion in new WAP funds to weatherize one million homes, compared to the usual 100,000 per year.

Boston attorney David Abromowitz, a partner in the law firm of Goulston & Storrs, said "a lot of the questions aren't answered yet" as to the extent to which WAP funds will be made available to owners of HUD-assisted and LIHTC projects and about how they can access the funds. Still, he called the memorandum a "breakthrough" and suggested that owners begin to evaluate how they might use the WAP funds in their properties, and contact their state and their local agencies to advocate "how much more efficiently weatherization can be done on a building-wide basis rather than tenant by tenant."

States were supposed to submit their plans to DOE by 5/12/09 outlining how they plan to use the WAP funds provided by ARRA.

According to HUD's news release, the new MOU will also impact residents of rural rental housing projects financed by Rural Housing Service Section 515 loans. ■

Resources

HUD-DOE Announcement, MOU
http://www.hud.gov/news/release.cfm?content=pr09-051.cfm

DOE WAP Home Page
http://apps1.eere.energy.gov/weatherization

WAP Technical Assistance Center
http://www.waptac.org

Choose Strength

Verne Barry Place is a "green" project in Michigan that serves homeless residents, including veterans. NEF invested $13.5 million on behalf of eight investors to fund it.

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On top of all that, we have the backing of the Local Initiatives Support Corporation (LISC)–the nation's leading community development support organization. In 2008, LISC and NEF invested $826 million to help revitalize distressed communities. Even in this market, NEF remains the company we have always been: we're still different. We do deals that matter. We believe in partnership. We focus on impact. We can make a difference...and we do.

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Funding Opportunities

HUD Makes Available Additional Funds From Economic Stimulus Act

THE U.S. Department of Housing and Urban Development (HUD) in May issued notices making available several different additional pots of monies provided by the American Recovery and Reinvestment Act (ARRA).

Archived HUD Webcasts on the initiatives may be viewed at http://www.hud.gov/webcasts/index.cfm.

These new resources include:

Public Housing Capital Grants

Nearly $1 billion is made available for competitive grants to public housing authorities (PHAs) to help improve their housing stock, promote energy efficiency, and create jobs. These dollars supplement nearly $3 billion in earlier ARRA formula grants to PHAs to build and renovate public housing.

The new competitive funds include: $600 million to create energy-efficient public housing units; $200 million in gap monies to build or renovate public housing projects stalled by lack of resources; $100 million to transform obsolete public housing projects into new or renovated developments; and $95 million to improve public housing units for elderly and disabled residents and create community facilities where these residents receive services.

PHAs must submit applications by 7/21/09 for the energy funds; by 8/21/09 for the other funds.

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

Neighborhood Stabilization Funds

HUD has made available an extra $1.93 billion for the Neighborhood Stabilization Program, for competitive awards to eligible recipients to help buy and redevelop abandoned or foreclosed residential properties to stabilize neighborhoods of high foreclosures and distress. The application, a notice, and other information has been released for this initiative, which is dubbed “NSP2” because certain rules and requirements were revised by ARRA from those of the original 2008 program and funding round.

Eligible applicants are states, units of local government, nonprofits, and consortia of nonprofits. The application deadline is 7/17/09.

HUD is also holding a separate competition for $50 million in NSP2 technical assistance funds.

(http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg)

Community Development Block Grants

HUD has allocated nearly $1 billion in extra Community Development Block Grant (CDBG) funds to states and local governments, to help fund projects and activities of their choice that meet the standard CDBG eligibility requirements. Among eligible uses are infrastructure and rehabilitation of affordable rental housing.

Recipients must give priority to projects that can award contracts based on bids within 120 days of the grant agreement.

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

Green Retrofit Program

HUD has issued guidance and is soliciting applications from owners starting 6/15/09 for $250 million in competitive grants and loans to finance energy efficiency and green improvements in eligible existing HUD and rural rental properties. *(See p. 20 for article.)* ■

RHS Unveils Demonstration Voucher Program

The USDA Rural Housing Service has announced the requirements and procedures for a new demonstration Rural Development Voucher Program, and $4,965,000 in available initial funding. Under the program, voucher rental assistance will be offered to residents of properties financed by RHS Section 515 loans that are paid off (after 9/30/05) prior to the loan’s maturity date, as the result of a prepayment of the loan or a foreclosure action. The RHS notice outlines tenant eligibility standards and other information. *(http://edocket.access.gpo.gov/2009/E9-9828.htm)* ■

Obama Budget Proposes Increased HUD Funding, New Programs

THE OBAMA Administration's proposed federal budget for the fiscal year beginning 10/1/09 calls for increased funding and several new programs for the U.S. Department of Housing and Urban Development (HUD). *(See chart on page 10.)*

The detailed budget request, released on 5/7/09, proposes total funding of $46.344 billion for HUD in FY 2010, a 10.8% increase above the enacted FY 2009 appropriation. The proposed FY 2010 funding is above the billions in extra dollars provided for many HUD programs by this year's economic stimulus act.

The proposed HUD budget recommends sizable increases over FY 2009 funding levels for a number of key programs, including Section 8 project-based rental assistance, tenant-based rental assistance (vouchers), Community Development Block Grants, and Homeless Assistance Grants. A small increase is proposed for public housing capital funds. Funding for the HOME program, Native American Housing Block Grants, Supportive Housing for the Elderly (Section 202) and Persons With Disabilities (Section 811), and Housing Opportunities for Persons With AIDS would remain at this year's level.

The budget proposes $1 billion in initial funding for the National Housing Trust Fund, which is intended to increase and preserve the supply of rental housing for low- and very low-income households. The trust fund was established in 2008 but hasn't been capitalized yet.

The budget proposes elimination or consolidation of 27 existing HUD programs and activities. No new funding is proposed for the HUD HOPE VI public housing redevelopment program. Instead, $250 million is recommended for a proposed new program called Choice Neighborhoods, which would build on HOPE VI but allow funding for a wider range of activities and applicants. The program's aim would be to transform

Budget,
continued on page 10

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Linda Hill
Vice President
415-983-5443
linda.hill@aegonusa.com

39089O 309

Budget,
continued from page 9

poor neighborhoods into healthy mixed-income communities. Funds could support transformation of assisted housing development, acquisition and renovation (or replacement) of unsubsidized privately owned housing, and construction of mixed-income housing in strategic locations.

Other proposed new HUD programs include:

- Sustainable Communities Initiative: $150 million, to integrate transportation and housing planning and decisions to maximize choices for residents and businesses, lower transportation costs, and drive more sustainable development patterns.
- Energy Innovation Fund: $100 million, to stimulate private investment in energy-efficient housing, including energy retrofits of existing properties.
- University Community Fund: $25 million, for competitive awards to universities for innovative community development strategies.
- Rural Innovation Fund: $25 million, to support targeted and innovative approaches that remedy concentrated poverty and housing distress in rural areas.

Rural Housing

The White House proposes the same level of funding in FY 2010 for several key federal rural rental housing programs administered by the USDA's Rural Housing Service. The same funding level as in FY 2009 is proposed for the Section 515 rural rental housing loan program and the Section 538 guaranteed rural rental housing loan program, and a nearly 21% increase requested for rural rent subsidies.

The budget request, though, assumes no new funds for interest credit subsidies for new Section 538 loans. Such subsidies were discontinued by the FY 2009 omnibus appropriation act. Rural housing advocates, including the Council for Affordable and Rural Housing, are trying to get the interest credit subsidies restored. A bill to do this, H.R. 1989, is pending in the U.S. House of Representatives.

(Budget summaries: HUD, http://www.hud.gov/budgetsummary2010/index.cfm; USDA, http://www.obpa.usda.gov) ■

Comparison of Enacted FY 2009, Proposed FY 2009 Budgets Appropriations

(in millions)

HUD Programs	FY 2009 Enacted	FY 2010 Proposed
Tenant Based Rental Assistance	$16,067	$17,836
Project-Based Rental Assistance	$7,100	$8,100
Public Housing Capital Fund	$2,450	$2,244
Public Housing Operating Fund	$4,455	$4,600
HOPE VI	$120	$0
HOME Investment Partnerships	$1,825	$1,825
Community Development Block Grants	$3,900	$4,600
Native American Housing Block Grants	$645	$645
Housing Opportunities for Persons with AIDS	$310	$310
Homeless Assistance Grants	$1,677	$1,794
Housing for the Elderly (Sect. 202)	$765	$765
Housing for Persons With Disabilities (Sect. 811)	$250	$250
Brownfields Redevelopment	$10	$0
Rural Housing & Economic Development	$26	$0
Lead Based Paint Hazard Reduction	$140	$140
HUD Total	**$41,833**	**$46,344**

USDA Rural Development Programs	FY 2009 Enacted	FY 2010 Proposed
Section 515 Rental Housing Direct Loans	$69.5	$69.5
Section 538 Rental Housing Guaranteed Loans	$129.1	$129.1
Section 521 Rental Assistance	$902.5	$1,091
Section 514 Farm Labor Housing Loans	$20	$22
Section 516 Farm Labor Housing Grants	$9.1	$9
Multifamily housing Revitalization Program	$27.7 *	$27*

** Includes $5 million for rural housing vouchers*

Site Selection & Market Analysis

LIHTC Developer Looks for Unique Feature, Edge in Selecting Sites

MATTHEW GREER, A MAJOR developer of low-income housing tax credit projects (LIHTC) in Florida, looks for sites that will make his properties stand out and be especially attractive to local renters.

This might be the location, physical attributes, or a partner.

These days Greer has two dozen credit projects underway in Florida, in various stages of development, mostly high-rise urban infill deals. He's limiting his new development to South Florida. Greer says renter demand for tax credit units remains strong in many parts of Florida, such as the counties of Miami-Dade (Miami), Broward (Fort Lauderdale), and Monroe (Key West). "There's so much need," he notes. By contrast, Greer says Central Florida and parts of North Florida – places like Orange, Hillsborough, and Lee Counties – are "more stressed" markets.

Greer is CEO of Carlisle Development Group, a Miami-based LIHTC developer/owner/manager. His site selection strategy and approach to development reflects a mix of the traditional well-funded developer doing standard LIHTC deals and the local nonprofit doing tougher mission-driven projects. Greer says there are enormous opportunities in a large market like Florida "if you have the strength of a for-profit [developer] and the vision of a nonprofit. We've felt like that [has been] a great market niche for us."

Carlisle's portfolio contains 8,222 completed multifamily rental units, including 6,775 LIHTC units.

Variety of Projects

The variety of Carlisle's projects is evident in a few examples:

- In Miami, Carlisle is partnering on a mixed-use project with a YMCA. Carlisle will demolish the outdated YMCA building, build a state-of-the-art mixed-use facility housing the YMCA and day care, and construct LIHTC apartments above, utilizing air rights the YMCA had no use for.
- In Miami, Carlisle has developed multiple "transit-oriented" tax credit projects, include several next to light rail stops. Carlisle leases or subleases government-owned land adjacent to transit sites. One current project is being built on a former parking lot for government employees.
- In South Florida, Carlisle is about to do a second, similar project in partnership with a local nonprofit. Carlisle builds the tax credit housing for formerly homeless residents, and the nonprofit provides the supportive services.

The LIHTC projects that Carlisle develops typically are new construction. But Greer says his firm has done some acquisition/rehabilitation deals utilizing federal historic tax credits.

Similarly, Carlisle has developed some LIHTC projects in suburban areas. But Greer said his preference and niche is new construction on urban infill sites. "We look for good infill locations where we can build a denser project that is near services; that fill in gaps in the community." Greer says these sites generally have strong, long-term market demand, and "it's the right thing to do from a policy point of view."

He notes, "We try to focus on brownfield sites or sites that have already been developed once. That creates an opportunity for us, because they're not currently being utilized." Greer said infill sites typically are near critical services and near one or more job centers, such as a medical district, government district, or manufacturer.

Greer said a project next to a rapid transit stop – metro Miami has an elevated light-rail system –

Site,
continued on page 12

Site,
continued from page 11

provides a compelling extra amenity for residents who live there and commute to work. "The biggest cost for a low-income tenant other than their rent is their car," he notes. Therefore, if tenants can leave their cars parked and commute by rail there are multiple benefits. Greer says the tenant now enjoys a higher effective income and a better quality of life. Plus, the project needs less parking.

Energy Efficiency

Carlisle is also focusing extensively on energy efficiency in new LIHTC developments. Greer said Carlisle has completed the first LEED-certified housing project in Florida and is about to build two more LEED-certified affordable housing developments.

Greer says Carlisle in some markets looks for a major employer, housing authority with housing vouchers, or a partner with other financing resource – "something that differentiates the project, so that you're hopefully in a market of one. That's not always possible, but that's what we look for."

He noted the current economic environment is good in some respects when it comes to finding a good site for a new LIHTC project. "Finding sites has gone from one of the harder things to accomplish to one of the easier things," he says, explaining that land is abundant, a lot is properly zoned, sellers are more flexible, and there's no longer the stiff competition from developers of market-rate apartments and condos.

Still, Greer says the positives are offset by the much greater difficulty today in securing tax credit equity. He said he expects to seek the new assistance made available by the economic stimulus act for stalled LIHTC projects for some of his pending deals. ■

Market Studies Tougher, More Complicated to Prepare Because of Economic Downturn

PREPARING MARKET STUDIES for proposed low-income housing tax credit (LIHTC) projects is tougher and more complicated than ever, according to market analysts. This is largely because of the severe economic downturn, they note.

As a result, analysts are having to do more research and legwork, spend more time on "macro" analysis, assess the "shadow market," and haggle more with developers about the best initial rents for their tax credit projects.

"In an economically challenged marketplace you begin to see problems with properties that you typically didn't see during the good times," says Columbus, OH market analyst Rob Vogt, a principal of VWB Research. He said during the previous good times, well-located and well-managed tax credit projects typically had occupancy levels in the high 90s to 100 percent, while even marginally-located and -managed properties were 94, 95 percent because of the cushion from a robust economy and strong job and household growth. Inherent problems in these marginal projects, Vogt says, "didn't come out because there was already a built-in market for those [properties]. Now that we're seeing economic challenges, those marginal properties begin to show some of their blemishes, and it takes time to analyze what those [root] problems are and how they might impact" proposed new LIHTC projects.

Says Columbia, MD analyst Bob Lefenfeld, principal of Real Property Research Group, Inc., "There are great unknowns today as to whether a deal is going to work and what project makes sense."

Central Component

Market studies are central to the LIHTC program. State housing credit agencies require a market study for every proposed project awarded tax credits, generally in the application process.

Generally prepared by a qualified market analyst, a market study is a document that provides the analyst's reasoned judgment of whether or not a LIHTC project as proposed (targeted tenant type, unit sizes, amenities, rents) is likely to be successful. This assessment is based on an analysis of a wide variety of collected information and data – about the project, site, surrounding neighborhood, market, local population, employment and income, rents and housing costs, and competing apartment properties. Roughly 20 state agencies have adopted in whole or part the recommended standards for the content and preparation of LIHTC market stud-

Market,
continued on page 13

Market,
continued from page 12

ies developed by the National Council of Affordable Housing Market Analysts *(http://www.housingonline.com)*.

A review of the proposed site is a key part of the market analysis. "If you're in what's perceived as the wrong location, that's always going to be a problem," says Lefenfeld. Increasingly, analysts now are looking more intensively at the local market and specific sub-market in terms of job growth (or contraction), demographic trends, and the level of "achievable" tax credit rents.

"What we are doing – and what our clients are asking us to do – is to really pay attention to job growth," says Bethesda, MD analyst H. Blair Kincer, of Novogradac & Company LLP. He said this is one new trend in market studies; a second is "a lot more people are reading the reports than used to."

With job growth slowing or stagnant and unemployment rising in many communities, the analyst's assessments of current and future local economic strength are critical calls.

Because local economic performance is so unpredictable, Vogt said his firm's market studies for the first time provide clients with two sets of projections: one if current economic conditions persist, and the second if the local economy improves. Vogt advises developers to "look at the worst-case scenario so that, if it happens, you'll be prepared for it."

'Bigger Picture'

Bud Clarke, Manager of the Investment Valuation Group at Boston-based MMA Financial LLC, and current chairman of the National Council of Affordable Housing Market Analysts, says market analysts today need "to focus more on the bigger picture… They need to understand where the property or where that sub-market fits into the larger economy."

According to Clarke, this means determining exactly where that sub-market and market is in the economic, demographic, and business cycles, which collectively impact the local real estate cycle. "Not all MSAs [Metropolitan Statistical Areas] and not all markets are going to be hit by this recession as hard as others. There are MSAs and markets that are going to come out of this recession sooner and stronger than others," he says. "Understanding cycles and knowing where you are in those cycles is going to be a much more important tool for the market analyst to understand and communicate to the developer, to assist them in which sub-markets to go into when looking for sites."

Vogt, for instance, said certain traits in one market – like high-end conventional apartment properties having higher vacancies than low-end properties – are just the opposite in other markets. Vogt and others also said local economies have and continue to shift so rapidly it's often wise to get an update of an older existing market study.

Lefenfeld's firm is expanding its economic analysis beyond just trends, to monitor many key indi-

Market,
continued on page 14

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Market,
continued from page 13

cators monthly and to check for one-time or unconventional events that will impact local jobs. For instance, he said Anne Arundel, MD, home of Annapolis, will gain 8,000 to 10,000 new jobs in 2011 as a result of a military base realignment.

Arguably the most important piece of the market study is the analyst's recommended initial rents for a tax credit project – rent levels the analyst believes will strongly attract low-income renters to assure expedited, full lease-up.

"We're seeing a lot more scrutiny on our recommended rents," says Kincer. He said this is often due to a "disconnect" between the higher rents a developer thinks can be charged in the market, and the lower level that Novogradac sees as realistic and achievable for the market and project. Kincer said his firm is saying "no" more often these days regarding developer's original proposals for new projects, mostly over initial rents, and is often helping them restructure their deals to make them more viable.

Analysts said they now assess the "shadow market" in a locality – the type and number of non-traditional rental units that might compete for the same low-income renters as the LIHTC project (e.g., rented single-family homes and condos). This inventory has swollen in much of the U.S. due to home foreclosures and "doubling up" of households.

Analysts said it's virtually impossible to estimate with precision the size and location of these shadow units and their likely impact on tax credit projects. One said the best information comes from putting shoe leather to the streets.

Still, the shadow inventory is often an impact.

Vogt, for instance, said Fort Myers, FL, is so overbuilt in condos that many owners are trying to rent them for whatever they can get. He said these units are hurting occupancy in tax credit projects with unit rents pegged to 60% of the area median income (AMI). Vogt said percentage occupancy levels in these projects are in the mid-80s, compared to 95% or more for LIHTC projects targeting households at 30%, 40%, or 50% of AMI.

Site Selection

San Francisco CPA Michael Novogradac, of Novogradac & Company LLP, says sites selected by developers for new LIHTC projects are still "so much driven"

Market,
continued on page 15

Market,
continued from page 14

by state qualified allocation plans – their priorities, preferences, set-asides, points.

Nonetheless, Novogradac and others are seeing changes.

"Affordable housing developers are finding that the land sellers are selling at more reasonable prices," says Novogradac. "There are more sites that are costing less and…they're getting better construction bids." But Novogradac and others said these positives are offset by greater difficulty securing tax credit equity for new projects.

Boston CPA John Mackey, of Reznick Group, says he's seeing proposed new construction projects "getting crowded out" in some states in the competition for 9% tax credit allocations. "With the difficulty in getting investors for bond deals, and the reduced [credit] pricing in the marketplace, I'm seeing that a lot of the acquisition/rehab deals that would normally be done as tax-exempt bond deals are now coming in for 9 percent credits," he says. "They score well, and they don't have this big a feasibility problem because [new] construction is more expensive."

Mackey's also advising developers to turn over every rock in their search for gap financing sources. For instance, he said one client with a proposed acquisition/rehab project comprised of multiple older buildings is following his suggestion to try to obtain historic tax credits, which can generate extra equity. "They think there's a good chance they'll get historic on many of the buildings," says Mackey, "and that'll provide an extra resource that they wouldn't have otherwise gotten." ■

Developer Profile

Bob Greer Adds New Pages to Playbook To Deal With Changing, Tougher Times

Bob Greer

CHANGE AND ADAPTATION have been instrumental to the success of long-time affordable housing developer Bob Greer, president of Michaels Development Co.

Greer has guided the firm over several bumps in the road over the years while overseeing development of one of the largest portfolios of low-income housing tax credit (LIHTC) projects in the U.S. These include both "stand-alone" LIHTC projects and large-scale public housing redevelopment deals funded by housing credits and the federal HOPE VI program.

Today, Greer, like others in the LIHTC industry, looks out at a landscape where it's tough to raise equity for new credit projects and where credit pricing to developers has fallen sharply. To respond, survive, and prosper, Marlton, NJ-based Michaels Development has added a new page to its playbook – raising tax credit equity itself from banks around the country, rather than from traditional tax credit syndicators as it had done until about 18 months ago.

"We've begun the process of becoming a syndicator ourselves," says Greer, 71, who joined Michaels 31 years ago. He said this approach has enabled his firm to successfully raise equity for new deals and to maintain the price it needs for project feasibility, while providing an economic return to banks and helping them satisfy their Community Reinvestment Act (CRA) requirement.

According to Greer, this change "required us to stop and reorganize a little bit, [and] change some of our staffing, so that we can provide the education to banks who have interest in credits, but who don't fully understand the program yet." After educating these banks, Greer says, "we've had repeat business with many."

Greer said other recent changes by Michaels have included purchasing the portfolios of other LIHTC developers, and coming in as a co-general partner with other developers with housing credit awards to help them get their project "across the finish line."

A few years back, the parent organization of Michaels Development, the Michaels Organization, decided to leverage its skills, experience, and capacity acquired from developing large projects in the HOPE VI program, to diversify into the development and renovation of

Greer,
continued on page 16

Greer,
continued from page 15

housing at U.S. military bases under the federal military housing privatization program.

Active in 29 States

Michaels Development has developed or is developing LIHTC and HOPE VI projects in 29 states. It is one of seven integrated companies that make up the Michaels Organization, which was founded by Michael Levitt in 1973 and has developed, financed, or acquired more than 40,000 apartments and currently manages 33,000 units nationwide. One of the affiliates, Interstate Realty Management Co., manages all of the company's properties and offers third-party asset and property management services. Michaels Military Housing develops military housing.

The path Greer took to become an affordable housing developer had several zigs and zags – all grounded in real estate. He graduated from the architecture program at Miami University in Oxford, OH, where, as a freshman, he was inspired by renowned architect Frank Lloyd Wright, a fellow Wisconsin native. "He spoke to my design class; it was really quite amazing," says Greer.

After graduation, Greer went to work as an architect for an architectural, planning, and consulting firm in Philadelphia. Eventually he moved westward, to join the Pennsylvania Housing Finance Agency, where he became Director of Development. "Working at the state agency with various developers gave me an opportunity to see what they were doing, where they were working, how their deals came together," he

Greer,
continued on page 17

Michaels Announces Go-Ahead on Military Housing Projects

Michaels Military Housing has announced it has secured all of the financing to move forward with development of family housing community projects at two U.S. Army installations in Arizona – Fort Huachuca and Yuma Proving Grounds.

The Michaels Organization, parent of Michaels Military Housing, together with the U.S. Army and Raymond James Financial Services completed an $82 million public bond sale to fund the $103 million, five-year development plan. The plan calls for construction of more than 200 homes and various community amenities at the two installations.

Fort Huachuca and Yuma Proving Ground are two of the last projects for the Army under the federal military housing privatization program. Under this, private developers construct, renovate, and operate housing for military personnel and their families at U.S. bases.

Michaels has contracted with two local home builders, Castle and Cooke and RL Workman Homes, to work on the two projects, a first for the program.

An historic post established in 1877, Fort Huachuca is home to multiple U.S. Department of Defense facilities, and covers more than 70,000 acres. Yuma Proving Grounds is an Army weapons and munitions testing facility and one of the largest military installations in the world. ■

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Greer,
continued from page 16

says. One day developer Michael Levitt asked Greer to join his firm, and Greer accepted.

Asked what he likes about being an affordable housing developer, Greer says it's the company's "ongoing commitment to provide safe, decent housing for lower-income families."

He concedes that being able to do this today as a developer is challenging. Equity is tougher to obtain and new LIHTC projects typically require even more layers of financing than before to pencil out. This has further intensified competition among developers for available gap financing sources. "The rules of the game have changed," says Greer. "We've changed with it."

Despite the industry's current challenges, Greer, who exudes a constant positive attitude, says the LIHTC program isn't "broken." In fact, he notes, "I think this has been the best program that provides the best affordable rental housing in the country that I've ever worked with."

Current Projects

At present, Michaels has a number of affordable housing projects under development, including HOPE VI deals in Chicago, New Orleans, Tampa, and Sarasota. As for military housing deals, the company has completed two phases so far and is starting a third at Fort Leavenworth in Kansas, and has contracts for jobs at two other U.S. Army bases and two Air Force Bases.

One of the projects Greer is proudest of has been the redevelopment of the former Robert Taylor Homes public housing complex in Chicago. This mile-long complex once consisted of rundown empty high-rise buildings. "We've accomplished a total neighborhood revitalization," says Greer, "by removing those towers and developing new contemporary affordable rental housing mixed in with other income levels to achieve a transformation of that part of the neighborhood."

After decades at Michaels Development, much of it on airplanes, Greer says "I still love my work." But he's making more time these days to "smell the roses" – enjoying time with his wife, children, and grandchildren, and even some personal travel. "For the first time," he says, "my wife and I took a four-week vacation to Australia. That wouldn't have been possible 20 years ago. We had a wonderful time." ■

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Making Sense of Solar in Affordable Housing Properties: A Primer

By Richard Raeke, Borrego Solar Systems, Inc.

IN MY FIRST MONTH in the solar energy business, I saw the future of solar – a Boston sports fan, dressed head to toe in regalia from every pro sports team. He certainly didn't fit the popular image of the solar customer. All the same, he wanted a solar system for his house.

Why was he the future? Simple. To him, solar made economic, if not environmental, sense. He was tired of unpredictable electric bills, and incentives would cover much of the system's cost.

Since then, we've seen solar energy systems at malls in New Jersey, at California wastewater plants, and even in affordable housing projects. Today, with lots of tax and financial incentives available and recent market events, solar makes more economic sense than ever. Contrary to public perception, a property doesn't have to be located in a sunny, hot place for a solar electric system to be viable. In fact, viability comes down more to financing before location.

In San Ysidro, CA, Steadfast Companies, an affordable housing developer, chose to include solar on its 42-building, 400-unit Villa Nueva apartment complex. The firm was already footing the electric bill for the master-metered property – both for common areas and individual apartments. Borrego Solar designed and installed a solar system that supplies 70% of the project's electric needs. Much of the cost was recovered by the owner from federal solar and low-income housing tax credits and California's solar incentive. Steadfast will receive clean power for decades to come, free from rate spikes and escalating prices from the electric utility.

Why Solar? Why Now?

A solar electric (photovoltaic, or PV) system is simple. It includes solar panels, usually installed on a building's rooftop, which capture energy from the sun and convert it to electricity. An inverter converts the DC current to AC, which then feeds through a utility meter into the building's electrical system.

While environmental stewardship has prompted many PV system owners to go solar, control of future electric costs and economic motivations have been the key drivers.

In addition, there's a wide array of available federal, state, local, and utility tax incentives, financial incentives, and rebates. *(For rundown, go to http://www.dsireusa.org.)*

For instance, in states that permit "net-metering," owners can receive a

Solar,
continued on page 20

Energy Efficiency Group Is Busy on Several Fronts

The Council for Energy Friendly Affordable Housing (CEFAH), a working group of some of the most active owners and managers of affordable housing, has been busy in several areas.

The goal of CEFAH, a council of the National Housing & Rehabilitation Association, is to identify opportunities for significant energy cost savings in affordable multifamily housing projects, and to work with policymakers to obtain regulatory and legislative changes to make such improvements feasible and permissible.

New leadership at the U.S. Department of Housing and Urban Development (HUD) creates fresh opportunities for CEFAH and private developers to collaborate with public-sector partners to improve the energy and utility performance of HUD-assisted and low-income housing tax credit properties. Recent discussions by CEFAH with HUD's Carol Galante, Deputy Assistant Secretary for Multifamily Housing Programs, and Ted Toon, Deputy Assistant Secretary, Office of Affordable Housing Preservation, were productive.

Recently, CEFAH hosted its 2nd Green Housing Symposium, on May 11, in Los Angeles. In addition, CEFAH has been active analyzing HUD's new Green Retrofitting Program funding opportunity (see p. 20) and recent policy changes that make it easier for multifamily owners and developers to use federal Weatherization Assistance Program funds (see p. 1).

Recent Symposium highlights included a CEFAH public policy update, and presentations on the mechanics of building energy audits and how owners can maximize the benefits from them, and about opportunities for sponsors to develop solar production facilities using a power-purchase agreement structure.

(For information on CEFAH and its activities, contact Thom Amdur, 202-939-1753, tamdur@housingonline.com.) ■

HUD Guidance Issued for New Retrofit Program

THE U.S. Department of Housing and Urban Development (HUD) has issued requirements, procedures, details, and the timetable for its new Green Retrofit Program for Multifamily Housing (GRP). The program offers $250 million in grants and low-interest loans to owners to fund energy efficiency and green improvements in eligible existing HUD-assisted multifamily rental housing projects.

HUD released the application and held a Webcast on the program on 5/13/09. HUD will accept applications starting June 15.

Program guidance, including details about eligible projects and improvements, is in HUD Notice H 09-02.

Funds are restricted to HUD Section 8, Section 202, and Section 811 projects and USDA Rural Housing Service Section 515 properties with project-based rental assistance. Funding of up to $15,000 per unit is available for improvements to reduce energy costs or water usage, improve indoor environmental quality, or provide other environmental benefits. Recipients must agree to a minimum 15-year extension of the property's affordable use restrictions.

Loan terms will be 15 to 35 years, and rates 0% or the Applicable Federal Rate.

(Guidance: http://www.hud.gov/recovery, check tab for Opportunities; Webcast, http://www.hud.gov/webcasts/archives) ■

Solar,
continued from page 19

credit from the utility for each kilowatt-hour of electricity that their PV system produces that isn't needed by their building and is put back into the commercial electric "grid." The building can use these credits when the owner's solar system isn't producing electricity. When retail rates increase, so does the value of these net metering credits.

In some states, system owners can also receive renewable energy certificates (RECs) that they can sell. With more states requiring part of the annual electric power generated in the state to come from renewable sources, this trend is likely to grow.

Market forces are also favoring consumers and developers. The price of a solar PV system has fallen 20% in the last six months due to the global economic slowdown and a glut in the supply of solar panels, which represent about half a system's cost.

Moreover, the American Recovery and Reinvestment Act (ARRA) extended the federal 30% solar investment tax credit for eight years, and gives owners a new option – not yet implemented – to obtain a cash grant from the U.S. Treasury in lieu of the tax credit.

ARRA also provides various funds that can be used to pay for solar PV systems. These include $250 million for competitive awards to owners for energy retrofits of existing HUD Section 8, 202, and 811 rental projects, and nearly $1 billion to be awarded to public housing authorities for construction, renovation, and energy improvements to housing. Finally, states, counties, and cities have received billions for energy efficiency and conservation and community development block grants that can be passed on to affordable housing developers for solar installations.

This influx of federal funding should mitigate the relatively high up-front capital cost of solar systems, as well as create new financing structures for solar. As a rule of thumb, a solar electric system costs $7,000 per kilowatt of capacity. Roughly 1.5 kilowatts can supply the full power needs of a one-bedroom unit. A system that fulfills all the needs of a 100-unit multifamily property will cost about $700,000. However, in projects that receive the federal solar and housing tax credits, PV systems usually provide power just for common areas and not for the apartments, in order not to risk the loss of expected tax benefits.

Typically more than a third of a PV system's total cost can be recovered by the owner from equity generated by the Section 48 federal solar investment tax credit, and accelerated depreciation. Another third may come from a federal grant or from a state, local government, and/or utility incentive program. That leaves about one-third of the expense for an owner or developer to come up with out of pocket.

The federal solar credit, claimed all in the first year, is a tax credit equal to 30% of the cost (including purchase and installation) of equipment that uses solar energy to produce electricity, heat or cool, provide solar process heat, heat hot water, or power fiber-optic lighting systems.

State, local, and utility incentives for solar systems vary widely from state to state.

In Massachusetts, for example,

Solar,
continued on page 21

Solar,
continued from page 20

owners can receive an upfront rebate on solar PV systems of roughly $3,000 per kilowatt through the Commonwealth Solar Initiative; the exact size depends on the owner, system size, and components. In California, the Production Based Incentive pays the owner 15 to 22 cents per kilowatt-hour produced during the first five years. A second California program, Multifamily Affordable Solar Housing (MASH), pays an upfront rebate for retrofitting solar on low-income housing equal to $3.30 per watt for common loads and up to $4 per watt for tenant loads. In New Jersey, the state's Solar Renewable Energy Certificates can trade from 30 to 70 cents per kilowatt-hour. New Jersey's utilities must buy these credits to meet the state's renewable portfolio standard.

Even with state or local incentives, though, an owner must usually cover a portion of a system's cost, and solar electricity may still not make sense if local electric rates are excessively low. Also, some sites just aren't amenable to solar because of shading, roof obstructions, or the orientation of the site.

Solar for Affordable Housing

Affordable housing developers have more financing tools at their disposal than the average solar customer.

In addition to claiming the solar tax credit, most of the cost of a solar system may be includible in eligible basis for the low-income housing tax credit (LIHTC), thereby producing some additional equity to help pay for the system. In a 9% LIHTC project, the combination of the equity from the housing and solar credits should pay for 100% of the cost of the system, regardless of the state/local/utility incentive. In a 4% LIHTC project, two-thirds or more should be covered. This assumes an LIHTC price of 85 cents, and an investor interested in the solar credits.

For retrofitting solar on existing buildings, the developer should look to the state or local incentive programs. California's MASH program is particularly lucrative for affordable housing developers. In Massachusetts, the state recently added a rebate of $1 per watt on top of its existing solar incentive for

Solar,
continued on page 22

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Solar,
continued from page 21

affordable housing projects.

Many municipalities and utilities offer incentives, such as a solar rebate by Austin Energy in Texas.

Solar installers – companies that engineer and install solar PV systems – are the best resource to help owners and developers work through the maze of government programs and incentives and to design and size a system appropriate to the building. Typically, the installer will first view a satellite photo of the building's roof, looking at shading, roof obstructions, and site conditions. If the roof appears unobstructed and will allow panels to be installed so they clearly face from southwest to southeast, a requisite, an installer will visit the site, inspect the condition of the roof, and analyze the property's electric bills for the past 12 months to gauge usage. Ideally, the designed system will produce 80% of the building's electrical load; the exact level will depend on site conditions and available rooftop space.

Solar is less expensive if installed in multiple properties all at once; the owner/developer can negotiate a lower price. Before hiring an installer, you should ask if they have prior solar experience with affordable housing properties. Their experience may be limited to warehouses, for instance, and therefore they may not be familiar with the idiosyncrasies of affordable housing. Or they may install only on homes and lack experience with larger projects or the ability to negotiate lower equipment prices from their suppliers.

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Funding Options

Affordable developers and owners can choose one of three routes. First, they can own the installed solar system themselves, and directly benefit from the tax credits and other incentives. A second option is for the owner to contract with a third party that owns the system, monetizes the solar tax credits, and sells the power to the property under a long-term Power Purchase Agreement (PPA). Third, the owner/developer can create a separate for-profit captive energy company, which owns the system (or systems, in the case of multiple properties), monetizes the tax credits, and sells the power to the building(s) under what is effectively a PPA. Under the first and third approaches, the developer/owner can also collect a developer's fee on the installation of a solar system.

A PPA has a set price per kilowatt-hour and a predetermined annual escalator. To quote an accurate price, a PPA provider should have an installer undertake a thorough evaluation of the properties to ensure that the system can meet production and installed cost estimates. The final PPA price will greatly depend on these variables.

Richard Raeke is the Director of Project Finance for Borrego Solar Systems, Inc., based in Berkeley, CA. He helps customers negotiate their financing options for funding solar electric projects. Borrego has built more than 3 MW of solar for affordable housing in the last year. Raeke can be reached at 510-849-5414, rraeke@borregosolar.com ■

Jackson Landmark to Be Rehabilitated as Part of Residential Project

THE STANDARD LIFE BUILDING, a landmark historic office building in the city of Jackson, MS, will be converted into 76 upscale apartments by HRI Properties, a leading historic preservation developer based in New Orleans.

The 1929 Art Deco masterpiece office tower will be rehabilitated and converted into a component of the King Edward hotel and apartments, an historic property now under renovation by HRI Properties, the majority owner and developer of the multi-building project. The development team bought the Standard Life building for $1 million from the Jackson Redevelopment Authority.

HRI is renovating both the Standard Life Building and the King Edward using equity and financing generated by federal and state historic rehabilitation tax credits and new markets tax credits.

Standard Life will be owned, financed, and operated with the King Edward as a single integrated unit, said Pres Kabacoff, co-chairman of HRI Properties. Local partners in Standard Life include Watkins Partners and former New Orleans Saints star running back Deuce McAllister. Both are also participants in the King Edward restoration.

The Standard Life Building was designed by architect C.H. Lindsay, who designed the Threefoot Building in Meridian, MS, which HRI Properties has been awarded the rights to redevelop into a 125-room hotel.

"Adding 76 apartment units in Standard Life to the 64 nearing completion in the King Edward increases the density and critical mass that will draw more residents to downtown Jackson and help transform this area into a vibrant residential, retail, dining, and entertainment neighborhood," said Kabacoff.

The Standard Life Building, on South Roach Street, contains 21 stories with 18 habitable floors totaling 96,682 gross square feet, plus an attached one-story annex building of 10,125 square feet.

The Standard Life financing of $33.5 million increases the total investment in downtown Jackson to $123 million in the combined King Edward/Standard Life development.

The Standard Life Building was designed by architect C.H. Lindsay, who designed the Threefoot Building in Meridian, MS, which HRI Properties has been awarded the rights to redevelop into a 125-room hotel.

Standard,
continued on page 24

New Iowa Law Amends State Historic Credit, Raises Cap

IOWA GOV. CHET Culver has signed into law a bill (SF 481) that amends the state's historic preservation and cultural and entertainment district tax credit program. This credit is equal to 25% of the qualified rehab costs of eligible historic buildings, including commercial properties, and is applicable against state income tax liability.

The law more than doubles, to $50 million, the maximum amount of state historic tax credits that can be approved in any one fiscal year.

It also establishes annual set-asides within the annual volume cap for the award of credits to projects in specific categories, including: projects in cultural and entertainment districts (30%); disaster recovery projects (20%); projects creating over 500 new permanent jobs (20%); projects with less than final qualified rehab costs of $500,000 or less (10%); and any kind of eligible project (20%). Credits reserved for one category but not awarded may be reallocated to other types of projects.

To be eligible for Iowa's tax credit, commercial buildings must be listed or eligible for listing on the National Register of Historic Places, or else be contributing buildings in an historic district listed on or eligible for listing on the National Register.

(Legislation: http://www.legis.state.ia.us) ■

Standard,
continued from page 23

Apartments, Retail

The renovated Standard Building will include 2,671 square feet of ground-floor retail space, 50 one-bedroom units averaging 772 square feet in size, and 26 two-bedroom apartments averaging 1,050 square feet.

Apartment amenities will include private terraces, granite counter-tops, wood and ceramic flooring; stainless steel kitchen appliances, ceiling fans, washers and dryers in each unit, and high-speed Internet access.

The team of White Construction and HCI Architecture will serve as the design-builder for the Standard Life renovation. HCI Architecture is an affiliate of HRI Properties with extensive experience in the adaptive re-use of historic structures.

The project has been made possible by the Jackson Redevelopment Authority, City of Jackson, Mississippi Development Authority, Mississippi Business Finance Corporation, and Mississippi Department of Archives and History. Financing comes from Chevron Tax Credit Investments, Inc., Tax Credit Capital, Inc., Capital One Bank, Trustmark Bank, Whitney Bank, First Bank and Trust, First NBC Bank, National New Markets Fund, and the National Cities Fund.

The historic King Edward Hotel is expected to open in late 2009 as a 186-room Hilton Garden Hotel. The 64 apartments on the upper floors are expected to be ready for occupancy in December. ■

CDFI Funds Reports on Seventh Round Applications

The Community Development Financial Institutions (CDFI) Fund announced on 5/14/09 the receipt of 249 applications in its 2009 funding round for federal new markets tax credits.

The applicants have requested a total $22,496,767,000 in NMTC allocation authority in the program's seventh round, which had an application deadline of 4/8/09. The amount available for award is $5 billion. The CDFI Fund expects to announce the allocation awards in October 2009.■

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Florida Lawmakers Pass Legislation To Create State New Markets Credit

FLORIDA'S LEGISLATURE RECENTLY approved and sent to the governor for his signature a bill (HB 485) to create a state new markets tax credit (NMTC). The Florida credit would be patterned after and have similar requirements to the federal new markets tax credit.

Louisiana, Mississippi, and Illinois are among the states that already have a state new markets credit.

The Florida credit would be available under a new state New Markets Development Program.

The credit could be used to reduce Florida corporate income or insurance premium taxes, and would be equal in amount to 39% of a taxpayer's qualified investment in an eligible business in a low-income community. The credits would be claimed over eight years, though none could be claimed in the first two years. New markets tax credits would total 78% of a taxpayer's investment in a business that receives both federal and state new markets tax credits.

The legislation, which would take effect on 7/1/09, would authorize up to $97.5 million in state new markets credits through 12/31/22, with a cap of $20 million in any single state fiscal year. There would also be a per-project credit cap of $10 million. Credits would be available on a first-come, first-service basis to sponsors that qualify as Community Development Entities under the federal NMTC program.

The program would be administered by the state Office of Tourism, Trade, and Economic Development, in conjunction with Enterprise Florida, Inc. The pair would be charged with designating the specific types of industries that are eligible to receive low-income housing community investments qualifying for the state new markets tax credit. According to the legislation, designated industries "must be those industries that have the greatest potential to create strong positive impacts on or benefits to the state, regional, and local economies."

Investments would have to be in low-income communities in Florida. The legislation defines a low-income community as any census tract with: (1) a poverty rate of 20% or more; or, (2)(a) a median family income not exceeding the greater of the metropolitan area median income or the statewide median family income (if the census tract is in a metropolitan area), or (b) a median family income not exceeding 80% of the statewide median family income (if the tract is in a non-metro area). ■

NH&RA Urges Critical Fix to New Markets Program

The National Housing & Rehabilitation Association (NH&RA) has urged Congress to make a critical fix to the federal new markets tax credit (NMTC) program.

In a recent letter to Senate Finance Committee Chairman Max Baucus (D-MT) and Ranking Member Charles Grassley (R-IA), NH&RA asked for clarification to permit the use of the NMTC program's "integrated unit test" on projects that consist of multiple buildings.

Currently, real estate projects must derive no more than 80% of their income from residential rental property to qualify for the NMTC. NH&RA's letter urges Congress to clarify that for projects involving multiple buildings, that this income test can be applied project-wide instead of on a building-by-building basis, as is now required. The group said this clarification will help facilitate development of critical mixed-use projects and services in low-income communities at a time when conventional real estate financing is harder to obtain. ■

Washington and State Update

State Briefs

Ohio Offers New Funding Resource

The Ohio Housing Finance Agency has begun a new program to support affordable housing initiatives not eligible for funding under standard OHFA programs. The new Housing Investment Fund offers loans and grants to developers and others for: pre-development, construction, and/or permanent financing for development of rental or for-sale housing; acquisition of property; capital improvements to existing OHFA-financed projects; and other uses. Two funding rounds will be held yearly. The second in 2009 will be later this year.

(http://www.ohiohome.org/housinginvestmentfund.aspx)

Philadelphia Gets OK to Sell Properties

The Philadelphia Housing Authority (PHA) says it's received approval from the U.S. Department of Housing and Urban Development to sell nearly 1,800 vacant houses and lots that it owns. PHA Executive Director Carl Greene indicated that PHA will list available properties and start accepting bids after HUD completes certain necessary preparations.

(http://www.pha.phila.gov/press/index.asp?id=167) ■

CAPITAL BRIEFS

HUD Solicits Suggestions on FHA Procedures and LIHTC

The U.S. Department of Housing and Urban Development (HUD) is soliciting public comments and recommendations by 6/29/09 on how it can expedite approvals of applications for FHA multifamily mortgage insurance for low-income housing tax credit projects. The HUD notice requests suggestions for changes to current administrative requirements and procedures. The notice reflects HUD's attempt to implement 2008 LIHTC-related statutory changes.

(http://edocket.access.gpo.gov/2009/E9-9677.htm)

Applications Solicited in Rural Housing Programs

The USDA Rural Housing Service is soliciting applications under two programs. In one notice, RHS solicits new applications by 6/29/09 for Section 515 rural rental housing loans, including under different funding set-asides and for states with rental assistance programs **(http://edocket.access.gpo.gov/2009/E9-9742.htm)**. A second notice solicits pre-applications by 6/29/09 from project owners to participate in RHS' Multi-Family Housing Revitalization Demonstration Program. This is open to owners with existing Section 515 loans or Section 514 or 516 off-farm labor housing loans and grants, and offers grants and loans designed to revitalize existing projects by restructuring their financing **(http://edocket.access.gpo.gov/2009/E9-9831.htm)**.

Updated NMTC Compliance Guide Issued

The Community Development Financial Institutions Fund has released a new document that poses and answers frequently asked compliance-related questions about the federal new markets tax credit program. Entitled, *Compliance and Monitoring Frequently Asked Questions*, it updates an older document and contains new information and guidance. The new document is posted at **http://www.cdfifund.gov.**

HUD Releases New Report on LIHTC Database

HUD has released a new, updated report that analyzes the Department's national database of low-income housing tax credit projects placed in service since 1987. The new report reflects the addition of data for projects placed in service in 2006, and discusses trends in project size, income targeting levels, etc.

(http://www.huduser.org/Datasets/lihtc/report9506.pdf) ■

Emerson,

continued from page 1

and is already 80% occupied. The project is in Laurel, MD, within a new master planned community in suburban Howard County, between Baltimore and Washington, DC.

Park View at Emerson is just one of the properties developed by Shelter under its "Park View" brand – independent living senior communities that combine affordable rents with custom tailored services.

Need for Senior Housing

Maria Miller, Senior Development Director at Baltimore-based Shelter Development, says Park View at Emerson addresses a significant need in Howard County, affordable apartments for seniors. The county has an average household income of $101,000, an excellent school system, and other positive attributes. Developments like Park View at Emerson enable long-term local residents to be able to afford to remain in the county when they get older.

Park View at Emerson, a four-story building, contains 58 one-bedroom and 22 two-bedroom apartments, all housing credit units, restricted to seniors 62 and older of low-income and extremely low-income. Nine units are reserved for tenants at or below 30% of the area median income (AMI); 24 units, 40% of AMI; 14 units, 50% of AMI; and 33 units, 60% of AMI.

Monthly rents vary by size of unit and income bracket but range from a low of $365 for a one-bedroom unit to a high of $930 for a two-bedroom unit.

Amenities include a fitness center, library, community room,

Photo courtesy of Harkins Builders

Park View at Emerson, Laurel, Maryland

business center with computers, billiards room, putting green, beauty salon, walking paths, and a "wellness center" where visiting doctors and health professionals can provide health services to residents.

Miller said Shelter Development first got the idea for the project when it heard that The Rouse Company, a renowned Baltimore developer that Shelter had worked with previously, was going to lead the effort to develop Emerson, a new 570-acre master planned community. Rouse developed one of the first planned communities in the country, in nearby Columbia.

General Growth Properties acquired The Rouse Company to replace Rouse as the master developer of the Emerson master planned community. Emerson has 200 acres of dedicated open space and will eventually contain 1,200 residential units, three office parks, a village center, community amenities, and walking paths.

Shelter bought the parcel of land for Park View at Emerson for $1.2 million, completed construction ahead of schedule in late December 2008, and began leasing units in January 2009.

Market Turmoil, Financing

Shelter closed on all the financing for the project in May 2008, after having to adjust the original financing plan because of the upheaval that began in the tax credit equity market – a declining supply of equity from investors and a sharp fall in credit prices being paid to developers.

Miller noted the steadfast support of Shelter's partners – tax credit syndicator Boston Capital, the county, and state – resulted in a revised structure that maintained the viability of Park View at Emerson and enabled it to move ahead.

The largest single source of funding for the $12.6 million project was equity provided by Boston Capital, which syndicated the 9% housing credits. Miller said despite the shift in the market, Boston Capital held to its original commitment and paid 88.5 cents per credit

Emerson,

continued on page 28

Emerson,

continued from page 27

dollar for the housing credits.

Other funding sources include a soft second mortgage from the Maryland Department of Housing and Community Development (40 years, 4%), a first mortgage (40 years, 8.18%) insured by the Federal Housing Administration under the Section 231 mortgage insurance program of the U.S. Department of Housing and Urban Development (HUD), and a deferred developer fee from Shelter. The HUD Section 231 program provides construction and permanent financing for development of rental housing projects for seniors.

To free up sources, the Howard County Housing Commission used $1.2 million in federal Community Development Block Grants to buy the land beneath the project from Shelter, in exchange for a 51% interest in the general partner of the partnership that owns the improvements. This enabled Shelter to recoup its $1.2 million outlay to acquire the land and redirect these dollars to other project expenditures. The county then provided a 99-year ground lease of the land at a favorable rent. The lease gives the county the first right to buy the improvements after 15 years.

The county also made a one-time contribution of $190,000 that will be used to provide shallow rent subsidies to select tenants of extreme need.

To make the project pencil out, Miller said Shelter deferred more of its developer fee, the county contributed an additional $500,000 in CDBG funds, and the state increased its funding.

The property also has a 40-year PILOT agreement with the county that will substantially reduce the property's annual tax payments to the county.

"We really did work in partnership with Shelter on this transaction," said Stacy Spann, Director of the Howard County Department of Housing and Community Development, and Executive Director of the Howard County Housing Commission. He described Park View at Emerson as "spectacular," and said the quick pace of lease-up attests to the property's appeal and to the strong need in Howard County for affordable apartments for seniors.

Miller said the project has a 40-year affordability period, due to an election made by Shelter to compete for the 9% housing credits.

A portion of the project's units must remain affordable in perpetuity to tenants at or below 60% of the county median income. This was required by the county's Moderate-Income Housing Unit Program, which mandates affordability of 10% or 15% of the units in new apartment projects.

Laura Surdel, of Boston Capital, said Park View at Emerson was the first project by Shelter that Boston Capital has funded with equity. She explained that Boston Capital was attracted to the deal because it wanted to begin a relationship with the "premier" developer. In addition, she said Howard County is an attractive location for some "CRA" tax credit investors.

"What we try to do is to originate and tie up and invest in quality real estate with quality developers," said Jeffrey Goldstein, of Boston Capital. "Clearly this was one deal that fit all those parameters." ■

Park View at Emerson – Source and Uses Summary

PERMANENT SOURCES	
FHA Insured 1st Mortgage (Section 231)	$2,138,800
Elderly Rental Housing Funds (DHCD)	$1,592,000
County Funds - CDBG Ground Lease	$1,200,000
Rental Subsidy Account	$190,000
9% LIHTC Equity	$7,267,460
Developer Equity	$302,482
Total Sources	**$12,690,742**

USES	
Land	$1,200,000
Construction	$7,809,561
Architect/Engineering	$393,695
Legal	$109,550
Financing Fees	$248,586
Studies/Due Diligence	$159,349
Fees/Permits	$392,000
Soft Costs	$2,378,001
Total Uses	**$12,690,742**

Credit,

continued from page 1

– actually two – right from scratch. And these new programs impose tight time frames.

"We're right back in 1987," said Washington, DC attorney Anthony Freedman, a partner in Holland & Knight LLP, referring to the first year of the LIHTC program.

The two new programs authorized by the American Recovery and Reinvestment Act (ARRA) are the Tax Credit Assistance Program (TCAP) and the credit exchange ("Section 1602") program.

ARRA allocates $2.25 billion for the TCAP program to 52 state HCAs to make competitive awards of financial assistance to projects with LIHTC awards (9% or 4%) received during the three-year period ending 9/30/09.

Under the exchange program, 56 state HCAs can turn in unused housing credits to the U.S. Treasury for cash grants, to make "sub-awards" of funds to stalled new construction or acquisition/rehabilitation projects – with or without a credit award – that have a funding gap. States can exchange up to 100% of their 2009 per capita and national pool credits, and up to 100% of unused 2008 housing credits and of credits returned in 2009.

On May 4, initial written guidance, requirements, and forms were issued by HUD for the TCAP program and by Treasury for credit exchange. On May 6, both agencies took part in an explanatory Webcast where new details came out. The officials also announced email addresses where people can send in questions about the two programs (TCAP@hud.gov; 1602Questions@do.treas.gov), and said their agencies will be posting the answers on their Web sites. These would be in addition to Q&As posted by HUD on May 4. *(A special report on the new guidance, distributed on May 6 to* Tax Credit Advisor *subscribers, is posted at http://www.housingonline.com/Documents/TCA Issues/guidance.pdf)*

Freedman described the initial HUD and Treasury guidance as "good, intelligent, and flexible."

State HCAs must apply to HUD by 6/3/09 to participate in the TCAP program and access their allocated funds. Virtually all are expected to participate. The state participation rate for the exchange program is unclear. State HCAs can apply anytime to Treasury to participate, and have through 2010 to submit one or

Credit,

continued on page 30

Resources

Links to State Notices, Plans
http://www.novoco.com/low_income_housing/news/hot_topics/recovery.php#state

HUD TCAP Web Page
http://www.hud.gov/recovery/tax-credit.cfm

Archive of HUD Webcasts
http://www.hud.gov/webcasts/archives

Treasury Credit Exchange Web Page
http://www.treas.gov/recovery/LIH-grants.shtml

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Credit,
continued from page 29

more requests to exchange credits.

States' Implementation

State HCAs are at different stages in their implementation of the two programs.

Freedman, outside counsel to some HCAs, said, "Some of them are inviting applications. But most of them are putting together the application to Treasury under the Treasury guidance, and the plan for HUD under the TCAP notice." Before submitting their TCAP application, HCAs must hold a five-day public comment period on their proposed competitive project selection criteria for TCAP awards.

The Ohio Housing Finance Agency (OHFA) submitted separate applications to HUD for TCAP and to Treasury for credit exchange within days after the initial federal guidance. OHFA Housing Credit Allocation Manager Kevin Clark, interviewed on 5/20/09, said his agency received HUD verbal approval in about a week, and is awaiting Treasury's response. "Right now our plan is to exchange 10 percent of our 2009 allocation," says Clark, "That'll give us about $21 million of [credit exchange] cash grants to use to start off with. And then, as we go further into the year, we may decide to exchange more."

He noted, "hopefully we can start taking applications [for the ARRA funds] at the beginning of June, and then hopefully by the end of June we'll be able to have our first awards."

Garth Rieman, of the National Council of State Housing Agencies, anticipated some states will begin awarding the ARRA funds to projects early this summer. "I think many of the states will have TCAP funds and exchange funds under their control in June," he noted. Rieman indicated some states may take longer than others to start making awards because of extra time needed to determine which projects to assist, or because their selection/ approval process is lengthier. He said many states now are "getting their proposed [implementation] plans out for public comment."

Clark said OHFA will likely award TCAP funds to projects as low-interest loans, and will award exchange funds as grants. He added, "We're open to mixing them, if need be."

OHFA has finalized its implementation plan on how it will use TCAP and credit exchange funds, and has held its public comment period.

Clark said the plan's first priority for awards is 9% deals with 2007 and 2008 housing credit reservations that haven't yet closed on tax credit equity with a syndicator or investor.

He said OHFA has 48 of these projects. Clark said OHFA is determining, one-by-one, exactly where each project is in the development process. This includes whether or not the sponsor has firm commitments for equity and for construction or permanent financing, and a completed appraisal and surveys. "Those that are the fur-

Credit,
continued on page 31

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Credit,
continued from page 30

thest along are the ones we'll look at first for the TCAP and credit exchange [dollars], to get those going," said Clark.

He said OHFA has fielded expressions of interest for ARRA funds from sponsors of a few 4% bond deals – another plan priority.

Clark said OHFA by 7/2/09 will select projects for 2009 LIHTC credits in its current funding round. He expected TCAP funds will be the source of funds for awards to 2009 deals that have gaps.

Clark said OHFA wants to set aside some credit exchange funds for awards to projects that have awards both of credits and state housing trust fund dollars. He explained that these projects, because of the trust funds, have already gone through a state environmental review, so OHFA wants to avoid putting them through a second, federal environmental review – a requirement for TCAP but not credit exchange funds.

Clark said OHFA will be contracting out the asset management functions mandated by ARRA for both programs, and already has consultants working with in-house staff to craft the more intensive underwriting that will be used in reviewing projects seeking assistance.

Surprises, New Information

The initial federal guidance for TCAP and credit exchange contained surprises for some LIHTC industry participants. These included that:

- Exchange program funds can't be provided as loans – only grants. State HCAs, on the other hand, can award TCAP funds as grants or loans.
- Exchange program funds can't be "disbursed" after 12/31/10 by HCAs to projects to pay for expended eligible costs. Some had believed 12/31/10 would be the deadline just for committing funds to a project.

Washington, DC attorney Richard Goldstein, a partner in Nixon Peabody LLP, said one piece of "good news" was clarification that federal cross-cutting requirements like Davis-Bacon and mandatory federal environmental reviews won't apply to the credit

Credit,
continued on page 32

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Please make plans to attend out annual compliance symposium November 4-6, 2009 at the Walt Disney World Swan and Dolphin Resort in Florida.

Credit,
continued from page 31

exchange program. These do apply to TCAP.

New information and clarifications include that:

- Projects must have at least a "nominal" amount of housing credits in them to be eligible for TCAP funds. Projects aren't eligible if they had credits but returned them. HUD hasn't defined nominal, but rather is leaving this up to states.
- TCAP funds can be provided to projects that receive advance awards of 2010 credits by 9/30/09.
- ARRA's "Buy America" provisions don't apply to TCAP or credit exchange.

The IRS is expected to issue, possibly in June, additional guidance to clarify some of the rules for the credit exchange program. The Service is said to be mulling requests for formal guidance to explicitly state that an award of credit exchange funds won't reduce a project's eligible or depreciable basis, and that a grant of credit exchange funds won't create taxable income for the recipient for federal income tax purposes. Another is guidance to states on how to reduce their 2009 housing credit ceiling amount for credit exchanges. Another area of possible guidance is about recapture.

Practitioners cited a couple of issues. San Francisco CPA Michael Novogradac, of Novogradac & Company LLP, said exchange funds provided as grants could create state taxable income for recipients in some states. He cited a risk in states that don't use federal adjusted gross income as the starting point for determining state income tax liability.

Goldstein pointed out that TCAP funds can't be used to purchase land, a normal starting point in an LIHTC project, since the guidance limits the use of these dollars to costs includible in eligible basis. ■

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