Kevin P. Martin & Associates, P.C.

KPM Affordable Housing Newsletter

December 2009

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Season's Greeting from the Managing Director

(**North Pole**) Our economy continues its tough battle. The cost of this recession is huge – 7 million jobs lost, $1 trillion in new debt shifted into the future, $1.2 trillion in potential output lost. Not a day goes by that we don't hear or read about some bad economic statistic.

Our 2009 work as an industry suffered from the perfect storm of a downturn spiral in the overall economic, financial and real estate marketplaces, resulting in a smaller tax credit equity marketplace. More than ever before, there's lots of vulnerability within our housing-related organizations.

Yet, despite the bad news, all of us remain committed to our mission of affordable housing and it is imperative that you continue to pay close attention to our Congressional platform to stimulate housing credit demand and broaden our investor base.

We heard about the good (there was some), the bad and the ugly at the *"KPM Affordable Housing Symposium"* in October at the Omni Parker House in Boston. We heard about glimmers of hope, we heard about optimism. More recent positive news tells us that we are on the verge of rebuilding the American work force, a major indicator in getting us back on track.

We've got to get our TCAP projects rolling, we've got to get the deals done, we've got to get paid for the work that we do, we've got to maximize our existing properties, we've got to create strong alliances and we've got to respond to the housing marketplace more than we have ever done before.

We at KPM applaud you – the developers, the syndicators, the lenders, the management companies – for doing what you do each and every day on behalf of those who need better and more affordable housing.

There is no question that 2010 is going to be another challenging year. Tough times have an opportunity to produce unparalleled results. Let us renew our commitment together, let us continue to challenge ourselves and our organizations, let us continue to fight for social justice and fairness, let us continue to view the world through the eyes of those less fortunate and let us continue to make a difference.

I wish you – our clients, friends and colleagues – all the very best that the holiday season has to offer.

Kevin P. Martin, Jr. Appointed Chair of National Affordable Housing Practice of BKR International

Kevin P. Martin & Associates, P.C. ("KPM") is pleased to announce that Kevin P. Martin, Jr. has been appointed Chair of the National Affordable Housing Practice of BKR International, KPM's worldwide professional association.

"This is a wonderful opportunity," says Kevin P. Martin, Jr., KPM's Managing Director. "More than ever before, we have an opportunity to make a positive impact coast to coast. The LIHTC program is at an important crossroads. It is imperative that we work to restore investment in affordable rental housing, produce and preserve needed affordable apartments and put Americans back to work."

"We are thrilled that Kevin is Chair of this important practice group," says Maureen Schwartz, BKR International Executive Director. "Kevin has a passion about affordable housing and BKR member firms are committed to being the 'firm of choice' when industry stakeholders are differentiating among CPA alternatives."

BKR member firms offer significant depth and breadth in the affordable housing practice arena. "Many of our national competitors are not delivering the service," Martin adds. "We offer a high value, viable alternative – one with a focus on brand recognition, service, technical depth and competitive fee consideration."

BKR International is a leading global association of independent accounting and business advisory firms. Ranked #8 in the world, BKR has 135 member firms with over 13,000 staff with 300 offices in over 70 countries.

Washington Update

By Marianne Heard, CPA, MST

Affordable Housing Tax Credits

As we go to press, the extension of the Tax Credit Exchange Program appears to be on its way to approval. On December 7, 2009, Ways and Means Chairman Charles B. Rangel (D-NY), introduced House Bill 4213, the Tax Extenders Act of 2009. In addition to other provisions, this act would extend the Tax Credit Exchange Program for one year through 2010. This Tax Credit Exchange Program was a part of the American Recovery and Reinvestment Act of 2009 and permitted the state housing agencies to exchange a calculated portion of their allocated tax credits with the Treasury for a payment of 85 cents per dollar of credit. Unfortunately, the extension did not include the 4% credit. This bill was passed by the house by a vote of 241-181 and now awaits consideration by the Senate.

You may remember from our conference in October there were three main areas that the affordable housing industry asked Congress to consider:

- Extend the Exchange Program and include the 4% credit in the calculation
- Broaden the investor base
- Increase the carry back period to five years

In November 2009 a bill to increase the carry back period was introduced by Representative Bill Parcells D- NJ. This bill contains a two-part plan that is anticipated to immediately stimulate investor demand for the low income housing tax credit.

Part one of the provision would permit investors with existing credits to carry back those credits to their 2008-2010 returns but only if they immediately reinvest in new affordable rental housing.

Part two of the provision would permit taxpayers to carry back credits generated by new tax credit projects (for which credits were claimed beginning in 2008) for five years as they arise during the ten year credit period.

No action has been taken on this to date.

The remaining request that the housing industry in the guise of the Affordable Rental Housing A.C.T.I.O.N. (A call to Invest in our Neighborhoods) Campaign has made to Congress is to broaden the investor base for low housing tax credits. This would require a change in the tax code and may be a part of an upcoming jobs creation bill. If this were to pass as requested, the tax code around passive activities would be changed to allow some S-Corporations, Limited Liability Companies, and closely held C Corporations to offset revenue with low income housing tax credits. At the time of going to press no action has been taken on this request.

Good government is the outcome of private virtue.

John Jay Chapman

New Markets Tax Credits

As a part of the extender package, the New Markets Tax Credit would be extended for one year. The extension allows for a maximum of $3.5 billion in equity investments and will keep the credit active through 2011. Under the New Markets Tax Credit Program investors receive tax credits based on their investments made into a CDE which in turn provides funding to qualified low income community businesses. These credits are received over a 7 year period. There are some very innovative uses for these credits in which historic credits, energy credits and, with proper structuring, low income housing tax credits can be all utilized within the same project.

Historic Tax Credits

The HTC has been a consistent winner in the real estate industry. There have been very few changes to the credit since it was established in the 1980s. However, as the major players utilizing this credit have noticed, there are numerous projects that could be done if certain measures were taken to enhance some of the features. As a result, this past year a separate bill was filed that would stand on its own merits. It was determined that the changes requested were of such importance that the risk of alterations, if linked to another bill, were too great to do anything but file as a stand-alone piece of legislation.

HR 3715 Community Restoration and Rehabilitation Act of 2009 was introduced to the House by Representative Allyson Schwartz on October 1, 2009 and includes the following items:

- Increase the historic tax credit from 20% to 30% for small projects with up to $5 million in qualified rehabilitation
- Permit the 10% non historic credit for older buildings to be used for residential rental property
- Change the definition of “older building” to include any building ’50 years or older”
- Allow tax-exempt tenants to occupy buildings that use historic credits
- Boost the historic credit an additional $2 dollars to $5 dollars per square foot depending on a range of energy savings starting at 30% and graduating up to 50% percent. Building owners could receive partial credit
- Allow an owner to receive the historic credit if the rehab costs exceed 50% rather than 100% of the original basis
- Specify that the proceeds from the sale of state historic credits should not be considered income for federal income tax purposes.
- Allow the transfer of historic credits to another taxpayer for projects less than $5 million in qualified rehab costs

A similar bill (S 1743) was introduced into the Senate by Senator Blanche Lincoln on October 1, 2009 as well. No action has been taken on these bills as we go to press.

Energy Credits

Energy Credits continue to play an important role for both individuals as well as business entities. Business can utilize the energy investment tax credit in which 30% of the cost of new solar (hot water or photovoltaic), small wind farms and fuel cells are installed. They can also get the 10% credit for the cost of geothermal, micro turbine and combined heat and power systems. These energy credits can be combined with the low income housing tax credit but will reduce the basis similar to the historic tax credit. The projects must be placed in service before 12/31/2016. Please see related articles in this newsletter.

Energy Articles

Are you thinking Green with your Qualified Action Plan (QAP)?

By Christopher Pulick, CPA

When the Housing and Economic Recovery Act of 2008 (H.R. 3221) was signed on July 30, 2008, state agencies were required to factor energy efficiency and historic character items into the state's QAPs effective for allocations after December 31, 2008. The Department of Housing and Community Development (DHCD) has adopted these changes along with the Patrick Administration principal "to develop sustainable projects featuring energy saving materials and processes".

In completing the tax credit application, the developer/applicant/project must achieve a threshold criteria of 182 points. If the application does not meet the threshold criteria, the application will not be reviewed in the competitive scoring process. DHCD has broken the scoring into 2 parts:

- Fundamental Project Characteristics – possible 100 points
- Special Project Characteristics – possible 82 points

In the Fundamental Project scoring, there are five subcomponents, each worth a maximum point total of 20 and a minimum of 12. Design is one of these components in which "Green" plays a major factor. DHCD will score projects high which include aspects related to energy star appliances or energy efficient mechanical systems, incorporated energy or recycled materials, air quality in the building and open spaces.

When considering the design component, it is vital to have a person on your development team who understands green. This issue was mentioned time and again during the "Green" panel at the 2009 "*KPM Affordable Housing Symposium*". Technologies are constantly changing each passing year and developers/project managers may find themselves changing aspects of the design plan to include some of those changes. That being said, the development team using best practices would include an architect who has been involved with green design and who may have worked with a green builder. Both must understand that the QAP submitted a year before new construction or rehab work is begun might not have had the material or technologies readily available at that time to build a better sustainable building.

Special Project Characteristics is the second part of the scoring by DHCD. This section is designed to encourage projects to include the characteristics that DHCD has on its agenda that support sustainability in affordable projects. Some of the characteristics on the agenda are as follows:

- Energy conservation
- Conservation of land
- Mobility
- Job creation
- Technical and strategic support to communities
- Expanded housing

There is a maximum of 82 points that can be awarded in the category. It is not surprising that DHCD would have green awards which total 42 of the possible 82 points. Some of these specific green characteristics include but are not limited to:

- Emphasis on environmentally friendly design and accessibility (maximum 26 points)
- Energy efficient envelope design (maximum 5 points)

Efficient building systems (maximum 5 points)

It is clear that DHCD has incorporated "green" in the competitive scoring of the QAP. It is important to have the right team to develop a sustainable project in the planning stages to ensure your project wins the tax credit allocation.

Summary of Personal Residential and Other Energy Credits

By Ron Gacicia, CPA

Personal Residential

In 2008 and 2009 Congress enacted various tax laws to provide tax credits for homeowners that purchase and install energy efficient materials and equipment. The IRC Section 25C provides a tax credit of 30% of the cost and installation of certain energy-efficient materials and equipment for years 2009 and 2010. The maximum cumulative credit is $1,500. The credit applies to purchases of exterior windows and doors, roofs (both metal and asphalt), insulation, furnaces and water heaters (oil, gas, and propane), electric heat pumps, central air conditioning, bio-mass stove and heaters and advanced main circulating fan. The code section requires that the residence be the taxpayer's principal residence and be located in the United States. The products have to meet strict energy efficient technical requirements in order to qualify for the tax credit. This is a non-refundable credit and applies to both regular and AMT tax for 2009 only. At the present time the tax credits apply to only regular tax for 2010.

It is advised that one should obtain written documentation from the manufacturer, contractor or supplier that the products purchased and installed meet the strict technical requirements as specified in the code section and that they will qualify for the energy tax credit. This written documentation should be retained with other tax documents for at least three years.

Other

The IRC Section 25D provides a tax credit of 30% of the cost and installation of certain solar, wind and fuel cells purchased and installed in the years 2009 through 2016. There is no limit to this credit and any unused credit can be carried over to future years. This is a non-refundable credit that applies to both the regular and AMT tax. The products that qualify for this credit also need to meet very strict technical standards. Solar water heating equipment has to be certified by the non-profit solar Rating Certification Corp or a comparable entity endorsed by the State in order to qualify for the credit. Under this code section it does appear that one has to install the products in your principal residence, but just a residence. This credit applies to condos and COOPs as well.

Again, one must obtain the proper documentation and retain for at least three years.

> *It is a fact—or have I dreamed it– that by means of electricity, the world of matter has become a great nerve, vibrating thousands of miles in a breathless point of time?*
>
> *Nathaniel Hawthorne*

HUD Comments

By C. Logan Robertson

The CHAPA Annual Dinner featured a keynote address from Shaun Donovan, Secretary of the Department of Housing and Urban Development. Secretary Donovan rejoined HUD after his previous service in the Clinton administration as Deputy Assistant Secretary for Multifamily Housing. In his address, he noted that the President's "Making Home Affordable Plan" was unveiled along with the "Financial Stability Plan and Recovery Act" to provide a comprehensive approach to current economic conditions. He highlighted efforts by HUD to mobilize its vast network of counselors and to increase HUD's budget for counseling by 50% for the next year.

Secretary Donovan indicated that in February, 2009, HUD began investing nearly $14 billion under the Recovery Act in our communities – three quarters of which was allocated in just eight days. The Recovery Act included a $2.25 billion injection of HOME funding to stabilize affordable housing projects financed by the low income housing tax credit. According to Secretary Donovan, other efforts, such as the Tax Credit Assistance Program and the innovative Tax Credit Exchange Program have helped funds to start flowing again.

In addition, the Homeless prevention and Rapid Re-Housing Program, efforts to transform rental assistance, and the Section 8 Voucher Reform Act, were spotlighted by the speaker.

Secretary Donovan mentioned four principles to move HUD's rental housing programs into the housing market mainstream:

- Making funding reliable
- Streamlining and simplifying programs
- Combining the best features of tenant-based and project based programs
- Bringing market investment and discipline to all rental programs

By working together for a common purpose, Secretary Donovan hopes we can create equal access to safe, affordable housing and create a geography of opportunity for every American.

Compliance Issues

Sub-Metered Projects

In a change that will benefit project owners and developers, the IRS has issued Notice 2009-44 which amends its guidance of July 2008 regarding utility allowances.

This new notice says that utility costs paid as a part of a sub-metered project in which the tenant pays the amount due based on their actual consumption to be an amount "paid by the tenant". Consequently, owners of sub-metered properties can resume getting a utility allowance and no longer have to worry whether the total payment collected from each tenant (for rent and utility) exceeds the maximum allowable rent allowed for tax credit rent.

HUD and or RHS rules must still be followed in order to obtain utility allowances for sub-metered projects and the appropriate schedules must still be followed.

However, special rules must be used for sub metered buildings not subject to the above HUD or RHS rules in order to receive a utility allowance.

- Sewer costs – treated as paid directly by tenant if
    - Costs are based on actual water consumption
    - Part of a combined water and sewer bill
- Administrative fees – can be charged by owner/agent if reasonable ($5 per month)
- Utility Rate – cannot be marked up by owner/agent

Allowable Fees under TCAP

On September 18, 2009 the IRS came out with guidance on what fees can be paid with TCAP funds and what fees must be paid from other sources. The Recovery Act did not authorize the use of TCAP funds for administration of the TCAP program. Consequently the following costs cannot be paid out of TCAP funds:

- Administrative functions of the state agencies – agency may also not charge TCAP grantee a fee to recoup these costs.
- Legal Fees as they relate to drawing up of documents/research/implementation etc. related to the disbursement of TCAP funds.
    - Closing costs related to the project itself would be considered "project costs" and be payable by the owner
- Project compliance costs for TCAP rules – responsibility of the TCAP grantee and may be charged to Project owner
    - Davis Bacon rules
    - Section 504 of the Rehabilitation Act of 1973
    - NEPA and related rules
    - Lead-based hazard control
- Asset management functions – these costs can be charged back to the project owner
    - Development/construction activities – such as underwriting, market studies and capital needs assessments
    - Property management operations – related to occupancy/maintenance/other compliance requirements
    - Review of financial management – budgeting/accounting/internal controls
    - Long term viability assessment – bench marks/cash flow

As we have reviewed a number of the documents that must be submitted to DHCD for projects utilizing TCAP funds, we have noticed that in addition to the usual documents of a forecast it is important to maintain a cash flow schedule showing the costs allowed under TCAP and when those costs are utilized. It is also critical to have a schedule breaking out the cost allowed under the TCAP guidance.

Conference Update

"*Guiding Your Organization through Turbulent Times*" the second annual Affordable Housing Symposium in which leaders in the industry come together to share ideas, network and strike deals, proved to be a grand success. As usual Kevin Martin Jr. set the pace with some key opening remarks and the day followed suit.

Dave Gasson, VP and Director of Corporate Communications, Boston Capital and Executive Director, Housing Advisory Group, let us in on some of the inner workings of Capitol Hill and how some of the most important affordable housing legislation in recent history made its way through the legislative process. We were all fascinated with the process

and the give and take involved in these historic times.

Dave Abromowitz, Partner at Goulston & Storrs, led a panel that shed some much needed light on the "Making Green Work in Affordable New England".

We saw a great example of a project that put all of the pieces together – Maverick Landing. But, the panel was very upfront and truthful about how difficult the entire process can be. They did point out that things are changing rapidly. Prices are becoming more competitive as more of the elements are being manufactured closer to home thus cutting transportation costs. They also pointed out it makes much more sense to begin small with the low hanging fruit such as water conservation and changing to more energy efficient light bulbs than to start with solar panels. They also stressed that in order to make a project work, the entire team needs to be together and on the same page from the very beginning. Dave and his group are working through several agencies such as CEFAH (Council for Energy Friendly Affordable Housing) and the Center for American Progress in order to get more exposure for energy issues and to help those in the affordable housing field make sure that we have sustainable housing for all in the years to come.

Representative Michael Capuano and Aaron Gorstein, Executive Director of CHAPA, paid return visits to update us on what we are doing as an industry locally via CHAPA and nationally in the House of Representatives to move along legislation. Both gave very insightful comments on the econ-

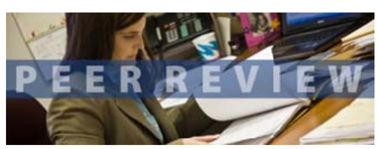
omy and the state of the housing industry.

Our last panel gave the "View" on Key Perspectives for an "Industry in Transition". Not surprisingly, getting investors was a hot topic. However, we were all happy to hear of some of the deals making their way through the process with the help of TCAP funds – although the TCAP process itself has been a challenge. We ended on a positive note and concluded that "innovation" is the word of the day.

KPM Receives Highest Marks on Peer Review

KPM is proud to announce that the Firm has successfully undergone its sixth independently performed peer review of the Firm's practice and received an unqualified report with *"no letters of comment"*. The Peer Review Acceptance Board ("RAB") accepted the results of the report on November 19, 2009.

"We could not be more proud of the results," says Karen Kent, KPM Principal and Chair of the Firm's Quality Control Committee. "This is the best of all



possible report results and puts the Firm within the top firms in the United States."

The purpose of the AICPA Peer Review Program is to ensure the highest standards of performance by member CPA firms in their delivery of accounting and auditing services. An unqualified opinion is an independent confirmation as to the quality of the Firm's services – the product of the Firm's commitment, leadership and philosophy regarding quality services to our clients.

I think we as a country have definitely got to do better when it comes to housing people of all backgrounds. Not only can't the less fortunate afford housing but fewer people of all kinds can afford it.

CeCe Winans

PTE-EX Issues

Reminder for Massachusetts Withholding by Pass-through entities.

If your organization is a pass-through entity with Massachusetts source income and non-resident partner/members, please provide to us information regarding withholding or exemption from withholding at the time you provide your other tax information. There are new disclosure requirements that must be completed with the pass-through entity's tax return.

Your KPM engagement manager can help you with any specific questions.

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KPM VIPER Consulting Receives Business Commerce Award

KPM is pleased to announce that its affiliate company, KPM VIPER Consulting LLC (“KPM VIPER”), has received the 2009 *“Best of Business Award”* from the Small Business Commerce Association (SBCA).

The SBCA 2009 Award Program recognizes the top 5% of small businesses throughout the country. Using consumer feedback, the SBCA identifies companies that have demonstrated what makes small business a vital part of the American economy.

“Both KPM and KPM VIPER are very pleased by this award,” comments KPM VIPER Executive Director, Lindsay Timcke. “It’s a reflection of our continued drive toward excellence.”

The SBCA selection committee chooses award winners from nominees based on information taken from monthly surveys administered by the SBCA, a review of consumer rankings and other consumer reports.

“KPM VIPER wonderfully complements the strategic direction of KPM’s lines of business,” says Kevin P. Martin, Jr., KPM’s Managing Director. “As important as our individual service offerings is being recognized at being the best at what we do. That’s the value proposition to our clients, that’s the real difference.”

KPM VIPER provides a host of technology consulting services including SOX 404 readiness compliance, disaster recovery, SAS70 Type I and II and ERP implementation assistance.

KPM VIPER is currently working with real estate companies to ensure compliance with the new Massachusetts Privacy Law (201 CMR 17.00), effective March 1, 2010. Has your company developed a written information security policy (“WISP”)? Is your email encrypted? What are you doing to protect personal financial data? Think about the types of personal information that you may maintain: Resident social security numbers; bank account and other investment information; resident tax returns; social security, pension or W-2 information; Section 8 voucher information; dependent-related information; Investor K-1 information and related social security and/or other federal taxpayer ID information; project tax returns and financial statements; payroll records and personnel files…and a whole lot more.

For more information about KPM VIPER Consulting, go to www.kpmviper.com or contact Lindsay Timcke, KPM VIPER Executive Director at ltimcke@kpmviper.com.

As the year ends, we think about all we are grateful for. Our relationship with you is one thing we treasure. Thank you for the opportunity to serve you. We hope you and all your co-workers, family, and friends have a lovely holiday season filled with joy and meaning.

Best wishes for a prosperous new year,

The KPM Family

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