

## Industry Coalesces Around Carryback and Exchange Extension Efforts

By Michael J. Novogradac, CPA

While the vast majority of low-income housing tax credit (LIHTC) industry participants are currently immersed in sorting through the most efficient and effective ways to access and implement the Credit Exchange program and \$2.25 billion in TCAP funding, a significant minority are aggressively pursuing an additional round of federal legislative LIHTC initiatives. These LIHTC legislative initiatives would broaden the equity investor base for low-income housing tax credit (LIHTC) developments and further the cause of restarting stalled projects and create jobs.

In pursuing LIHTC initiatives this legislative session, the Center for American Progress (CAP), a progressive Washington, D.C.-based think tank, and Living Cities, a philanthropic collaborative of 21 of the world's largest foundations and financial institutions, recognized that the number of competing LIHTC proposals during the stimulus bill debate earlier this year made enactment of any proposals quite difficult. These groups are attempting to avoid a repeat performance of competing LIHTC proposals this time around.

Living Cities says that with the subprime mortgage crisis, the collapse of the low-income housing tax credit (LIHTC), and the affordable housing industry and federal housing policy in flux for months, it is supporting CAP in an effort to help build consensus and address the three critical areas of housing finance that include "determining how to respond to the collapse of the LIHTC, the number one source of funding for affordable rental housing in this country."

In an effort to build consensus, CAP and Living Cities sent

invitations to a broad based group of people interested in affordable housing and as we went to press two LIHTC round-table meetings had been held. At those meetings, this coalition of about 30 groups focused on two goals, consensus and a focus on those actions that would help stalled projects and increase investment in affordable housing. The hoped for outcome of this group's meetings is a letter that will focus on the issues most critical to the affordable housing industry, be distributed to large number of groups throughout the country and aimed at members of Congress. "This was an extraordinary meeting convened at a critical juncture for our housing agenda," said David Gasson, executive director of the Housing Advisory Group (HAG) and vice president and director of corporate communications at Boston Capital.

In addition to HAG, some of the organizations represented at the roundtables were the National Association of Home Builders, National Council of State Housing Agencies, Affordable Housing Tax Credit Coalition, National Housing Council, Enterprise, Local Initiatives Support Corporation, National Low Income Housing Coalition, National Multi Housing Council, National Leased Housing Association, the Affordable Housing Investors Council and a number of for-profit and not-for-profit organizations.

At the first meeting, each organization was asked to submit its specific agenda items for consideration. Seven actionable items were gleaned from the submissions. They were:

1. an extension of the Tax Credit Exchange program,
2. additional funds for the TCAP program,
3. a five-year LIHTC carryback,
4. extend Tax Credit Exchange program to include 4

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- percent tax-exempt bond LIHTCs,
5. passive loss changes to encourage individual and sub-S corporation investment,
6. a 4 percent floor of 4 percent and
7. a 30 percent basis increase for 4 percent projects.

After considerable discussion on these proposals, which included the political reality of success in getting the agenda items addressed by Congress, consensus was reached on three items, with agreement that there was need for further study on the others.

Three proposals were endorsed unanimously by the group at its first meeting. First, there was agreement to support a one-year extension of the LIHTC Exchange program, including GO Zone disaster credits. Second, there was agreement to support a 4 percent credit floor for the 4 percent credit. Third, there was agreement to support a five-year LIHTC carryback that consists of two parts. The first part would allow credits generated from current LIHTC portfolios to be carried back five years if 100 percent of the carryback benefit was reinvested in

new LIHTC developments. The second part would create a permanent five-year carryback for any new LIHTC investments.

There was unanimous opposition to an additional appropriation for the TCAP program, according to Gasson. Groups were concerned this could drain resources from other HUD housing programs. "It's no longer on the table," said Rick Goldstein, a partner in the Washington, D.C. office of Nixon Peabody and General Counsel for the Affordable Housing Tax Credit Coalition (AHTCC).

At this writing on July 21 and after the group's second meeting in mid-July, Goldstein said a letter had not been finalized and he cautioned that things could change. He portrayed the two proposals that seemed solid as a two-part carryback and a two-part exchange program, both of which AHTCC supports.

"There appears to be consensus on the extension of the current exchange program for 9 percent credits and

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expansion to allow states to exchange 4 percent credits, this potentially will allow financings to go forward.” Goldstein said. He said there is also consensus on the five-year carryback proposal for existing portfolios and for new investments.

The five-year carryback proposal includes a provision to allow the carried back credits to reduce the alternative minimum tax and would require any institution with a current credit portfolio taking advantage of the carryback to invest 100 percent of the tax benefits in new or significantly rehabilitated LIHTC developments. The five-year carryback for any new investments made would not be required to reinvest any proceeds.

Still in discussion is the possibility of a slight modification to the passive activity rules, which would allow regulated banks organized as S corporations to use the tax credit in same way as regular corporations use it, Goldstein says.

Gasson said that the exchange of 4 percent credits would be on a deal-by-deal basis and offer the ability to use private financing in lieu of bond financing if the state takes a corresponding reduction of its volume cap. The proposal is being reviewed and refined but the need exists, said Gasson, so “it is being seriously considered.” Gasson also says that HAG continues to advocate for a fixed 4 percent credit.

Another member of the group, The Housing Credit Group of the National Association of Home Builders (NAHB) lists as its priorities the extension of the tax credit exchange program and the five-year carryback proposal. “The top of our wish list are the proposals to bring investment back into the LIHTC and to help move forward the projects that are stalled because of all the troubles in the tax credit investment market,” said Greg Brown, NAHB assistant staff vice-president in the Government Affairs Division. “We’re still trying to work though what will be on that list but these general categories work with our membership and in the industry overall.”

Brown says the Housing Credit Group is attempting to come to consensus on what makes sense, what is most

achievable and will have greatest impact to keep the industry moving in positive direction and return to health. “We have not come out with a list of the things we want but it’s safe to say that getting some additional gap financing or resources for stalled projects is top of the list as is ensuring that there is investment brought back into the market so we can get construction of new and rehab of existing projects going again that are pretty much stalled.”

Still mulling its stance, National Council of State Housing Agencies (NCSHA) will review the coalescing group’s final proposals before making any decisions. “We’re taking a look at where we are with programs we’re running this year, considering how the markets are responding and what the likely prognosis is,” said Garth Rieman, director of Policy and Government Affairs for NCSHA. “We feel that based on supporting the carryback proposal when we were looking at the ARRA (American Recovery and Reinvestment Act) legislation, [that] we’re on record as supporting the carryback.”

Rieman says that NCSHA could support proposals for increasing investment in affordable housing and providing for more flexibility for individuals to invest in the LIHTC. He says it’s important that disaster credits are included in any proposals. Rieman said NCSHA is also considering proposals to extend the exchange program for another year and to extend the current deadline for spending exchange program proceeds beyond December 31, 2010. “It seems unreasonable to expect those [developments] getting funds in the next few months to [meet the December 2010 deadline],” he said. If Treasury doesn’t extend the deadline, Rieman said the proposed one-year program extension legislation could be a vehicle for making those changes.

Ultimately, Rieman said, NCSHA does not have a position at this time. “We’re continuing to look at situation and deliberate internally rather than endorsing specific proposals,” he said. “I’m sure we will develop our position more fully soon and let people know what we think.”

This effort to build consensus around a handful of pro-

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posals is a positive step for the industry, and comes at a critical time in which the affordable housing industry finds itself in danger of grinding to a halt. This effort deserves the support of everyone participating in the LIHTC industry. Whether that support takes the form of discussion and debate on the issues or endorsement of the final proposals put forth by this forward-looking

group of organizations, we encourage each and every member of each and every housing organization, for profit and not-for-profit, to take action, join the debate, make your voices heard, and do what you can to help form national policy. The very future of our industry is in our hands. ❖

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