

Third Quarter Wrap-up: The LIHTC and Politics

By Michael J. Novogradac, CPA

As time begins to close in on the end of yet another year, the 20th anniversary year of the low-income housing tax credit (LIHTC), there are signs that the industry could still see the passage of bill that would amend some aspects of the program and the possibility of a Congress whose make-up is more amenable to the production of affordable housing nationwide.

Despite the uncertainty that an election year can bring, industry leaders expect that the remainder of 2006 holds if not actual achievements then at least the promise of favorable things to come in 2007.

Speaking to participants assembled for the 13th Annual San Francisco Affordable Housing Conference last month, a panel of Capitol Hill veterans - Francine Freidman, David Gasson, Richard Goldstein and Michael Novogradac - all sounded a positive note for the health of the LIHTC program.

Tax Extenders

Friedman, an associate with Hunton & Williams' government relations team in Washington, D.C. and who represents the Affordable Housing Tax Credit Coalition (AHTCC) as a lobbyist on Capitol Hill, spoke optimistically on the possibility that an extenders bill would take place yet during the 109th Congress. If that doesn't happen by the end of September, "we may see [its passage] by the end of the year," Friedman said, pointing specifically to an expected lame duck session after the November elections. She noted that the industry may even want to wait for new housing proponents in the 110th Congress.

In a defeat for the tax extenders bill, the Senate on August 3 failed to pass legislation that would have extended through 2009 the bonus depreciation eligibility deadline for nonresidential real and residential rental property in the Gulf Opportunity Zone, and the new markets tax credit (NMTC) beyond its 2007 sunset. The bill, H.R. 5970, referred to as the 'Trifecta' bill, included permanent estate tax relief, tax extenders and increasing the minimum wage. It failed, 56-42, on a vote taken just before Congress adjourned until after Labor Day. The House had passed H.R. 5970, the

companion Estate Tax and Extension of Tax Relief Act of 2006, shortly before adjourning for its August recess on July 29.

Senate Republican party leaders wanted to tie the tax extenders legislation to permanent estate tax relief and a minimum wage increase, a move that most Senate Democrats opposed. Democrats then mounted an effort to pass a stand-alone extenders package. But don't look for a stand-alone bill, Friedman says, noting that single provisions rarely occur with tax credits.

Tax Reform

Friedman says her organization is not concerned with tax reform at this stage, noting that Treasury is "behind tax credit programs," and that hearings continue on the issue. Boston Capital's David Gasson noted that tax reform will be addressed next year although at this time its makeup is anyone's guess. "All returning [legislators] have a tax reform agenda," he said.

Action and the LIHTC

In addition to passage of the tax credit extension, AHTCC is working with the National Council of State Housing Agencies to strengthen the LIHTC program and bring more decision making to the states. These include exempting housing bond and credit investments from the alternative minimum tax (AMT); providing relief from the mortgage revenue bond (MRB) 10-year rule so states can recycle more MRB mortgage payments into new mortgages for first-time home buyers; allow states to provide greater housing credit amounts to properties that achieve state-determined goals; encouraging mixed-income housing by changing the housing credit rule that requires all scattered site properties to be 100 percent occupied by low-income families; and rename the Low-Income Housing Tax Credit the Affordable Housing Tax Credit to broaden community acceptance.

"We want more flexibility for state housing agencies," Friedman said, providing an example in which states would decide if they wanted to provide more money per development for high quality proj-

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ects and not for the greatest number of units. AHTCC also sees the option for the of tax credits to not be limited by the AMT.

Politics and the LIHTC

Sounding the first note in a score that would repeat several times throughout the panel's presentation, Friedman said that politics is more important than ever as elections draw near. "There's not enough understanding of tax credits on the Hill," she said.

"There's nothing going on in Congress on housing," added Richard Goldstein, of Nixon & Peabody LLP, echoing Friedman's observations that everything on Capitol Hill now is about politics. "Affordable housing is not on the lips of candidates; it's not a topic politicians are involved with."

Despite this bleak picture, Goldstein, who represents clients in legislative and regulatory matters before Congress and federal agencies, is optimistic. "We're very fortunate with the LIHTC — it's gotten support," he said, noting that the LIHTC program has more congressional backing than HUD housing, which is "largely off the radar screen." But even HUD housing has experienced last-minute reprieves in previous years. "Despite the administration asking for deep cuts in HUD programs, Congress rejects it and does not gut the programs," Goldstein said, noting that HOME, CDBG and HOPE VI programs continue to be kept alive, although the latter "at life support numbers."

"Everything going on now is political," added Gasson, vice president and director of corporate communications for Boston Capital Corporation, responsible for all external communications, including community affairs, and state and federal legislative issues. Gasson also serves as executive director of the Housing Advisory Group, an organization that helps educate state and federal officials on housing programs and policies.

Gasson provided a virtual who's who, or perhaps more accurately, a who-could-be-where, of committee chairmanships after the November election. With the chairman of the House Ways & Means

Committee Bill Thomas retiring, the next in line if the Republican's retain control of the House appears to be Louisiana's Jim McCreery, who since Hurricane Katrina devastated his state has become a convert to and advocate for tax credits. Connecticut's Nancy Johnson, a long-time friend of the LIHTC industry, has more seniority on the panel than McCreery and is on a very short list of potential next chairs. She is also in a close reelection contest. "It she doesn't win [reelection]," Gasson said, "call 911."

If Democrats gain control of the House, New York's Charles Rangel would take control. "If Charlie and Nancy win, let's have a party," said Gasson. "We could have no greater advocates on Ways & Means."

Goldstein and his fellow panelists noted a significant number of congressional seats are in question. For control of the House to change from Republican to Democrat, the Democrats must gain a net 15 seats. To control the Senate, the Democrats need to gain a net six seats. "There is going to be significant turnover," he said. It was estimated that the chances for flipping 15-16 seats in the House is not out of the question and that Senate Republicans are in some degree of trouble in races in Missouri, Montana, Ohio, Pennsylvania, Tennessee and Rhode Island, all currently Republican held seats.

Ultimately, Gasson says, "housing is in good shape, no matter who wins. We'll still play offense in regard to issues in the 100th Congress."

Goldstein in his closing comments urged those in attendance to let their representatives, no matter who is in control, know what's essential. "It's important that those involved in the process know the good that is done through affordable housing production," he said. ❖