



The Housing Advisory Group (HAG) held its 13th annual Affordable Housing Congressional Forum in Washington, DC, on June 9, 2010. The Forum was well attended, with guests and members representing state housing agencies, social services representatives for residents of affordable housing, and the development, investor, syndication, accounting and legal spectrums of the affordable housing industry.

Highlights of the Forum included comments by Ways and Means Select Revenue Measures Subcommittee Chairman Richard Neal (D-MA) and Carol Galante, Deputy Assistant Secretary, Department of Housing and Urban Development (HUD). We also had the opportunity to hear from a panel of senior congressional staff, moderated by Lauren Bazel, Center for American Progress (CAP). The panel included Kathleen Black, Tax and Finance Advisor to Senator Olympia Snowe (R-ME) and Kathy Kerrigan, Tax Counsel for Senator John Kerry (D-MA). Melissa Mueller, Tax Counsel for the House Ways and Means Committee and Representative Richard Neal (D-MA) and Scott Olsen, Tax Counsel for Financial Services Chairman Barney Frank (D-MA) had also been scheduled to speak to the group, but were unable to make it due to votes in the House.

We also had an excellent panel of affordable housing professionals who shared with us their expertise on the current issues facing the affordable housing market today and the industry's future. Panelists were Susan Dewey, Executive Director, Virginia Housing Development Authority; David Salzman, The Richman Group; Meg Manley, HTA Development; and Deborah VanAmerongen, Nixon Peabody. The industry panel was moderated by Housing Advisory Group board member Tony Freedman, Holland & Knight.

At the reception following the meeting, HAG members had the opportunity to speak with a number of legislators, including Senate Majority Leader Harry Reid (D-NV), House Speaker Nancy Pelosi (D-CA), Banking, Housing and Urban Affairs Chairman Christopher Dodd (D-CT), Ways and Means Chairman Sandy Levin (D-MI), Senator Ben Cardin (D-MD), Senator Susan Collins (R-ME), Senator John Kerry (D-MA), Senator Frank Lautenberg (D-NJ), Senator Olympia Snowe (R-ME), Senator Jeanne Shaheen (D-NH), Senator Jack Reed (D-RI), Senator Jeff Merkley (D-OR), Senator Ron Wyden (D-OR), Representative John Yarmuth (D-KY) and Representative Peter Deutsch (D-FL).

Housing Advisory Group Chairman Bob Moss opened the Forum, thanking HAG members for their advocacy of affordable housing and the HAG board for handling the many issues that arise on a daily basis. Barbara Pate, Davis & Harman LLP and counsel to the Housing Advisory Group, welcomed our first speaker, Chairman Richard Neal, noting his continual support of the LIHTC program.

Chairman Neal said he understands the strong needs for generating affordable housing and also understand the complexities of providing affordable housing. Chairman Neal discussed the financial situation the country currently faces, noting the increasing federal budget deficit that was built up through the invasion of Iraq, the war in Afghanistan, and the corresponding VA health benefits that are now due and will become due. He noted that when Former President Bill Clinton left office in 2001, there was a surplus projected over ten years – in the last three years of his presidency, the deficit was eliminated. He said, during George W. Bush's presidency, war spending was doubled and taxes were cut by \$2.3 trillion. In November 2009, President Obama turned his attention to the deficit, and created earlier this year a bipartisan commission to address the federal debt and recommend actions to bring the federal budget deficit to 3% of President Obama named former Clinton White House Chief of Staff Erskine Bowles and former Republican Senator Alan Simpson as co-chairmen of the commission. Chairman Neal said that we have a long road ahead and we await the commission's recommendations. He reaffirmed his strong support for the LIHTC program, but said that, nonetheless, we are staring at difficult times ahead. At the end of Chairman Neal's comments to the group, Bob Moss asked specifically about the status of the extenders bill. Chairman Neal commented that at the end of the day, the language will be pretty close to the Senate bill because it will be necessary to get the 60 votes needed to pass the bill in the Senate.

Following Chairman Neal's comments, the Congressional Staff Panel Discussion also commented on the difficult current economy we are facing. Ms. Bazel stated that we are facing rough times in the broad economy and in the housing market, and more specifically, in the affordable housing market. Ms. Bazel thanked the Senators and their staff for their work on affordable housing issues. She noted that in a lot of the country jobs building affordable housing are some of the only jobs that have continued through this economic downturn. Ms. Bazel also commented that homelessness is costly for society and there is no shortage of demand for affordable housing. She noted that there are currently 800,000 homeless children in the public school system and there was an 85% increase in doubled-up households from 2005-2008. Turning to the current legislation, Ms. Bazel commented that the extenders bill includes a one year extension of the 9% exchange program, an extension of the GO-Zone placed-in-service date, and capital for the Housing Trust Fund. She noted that both Senator Jeff Bingaman (D-NM) and Senator Maria Cantwell (D-WA) have bills that would benefit affordable housing, and that Congresswoman Linda Sanchez (D-CA) and Congressman Bill Pascrell (D-NJ) have bills that include an exchange and a carry-back provision. Ms. Bazel asked Ms. Black and Ms. Kerrigan to comment on the short term prospects for this legislation.

Ms. Kerrigan stated that the extenders bill currently is on the Senate floor. She noted that the one-year extension of the exchange program was more difficult to get into the bill than anticipated, so we should be pleased that we will have the exchange program for one more year. Ms. Kerrigan said that a few changes to Senate Finance Chairman Max Baucus's (D-MT) amendment will need to be made. She said the bill was still a moving target and she sees the bill being worked on until at least through the week of June 14. Ms. Kerrigan noted that it will be difficult to get other housing provisions enacted this year. The next bill is the small business jobs bill and the carryback and reinvestment provision is being worked through with the Finance Committee. She said it is too soon to know how that will play out. The small business bill is complicated because of the estate tax.

Ms. Black added that Congress, rather than taking the extenders bill to conference, is "ping-ponging" the bill between the House and the Senate. She said this is making the process very complicated because the members are not talking like they would if the bill was in conference. She also noted that the revenue offsets were a conundrum here and that the business community is not willing to accept them in order to get beneficial tax provisions extended. If it was just a tax bill, she said, it would be less complicated, but the spending provisions complicate the bill. Ms. Black also echoed Chairman Neal, stating that getting the 60 votes from the Senate is difficult. Ms. Black commented that she did not think we would be looking at a 2011 extension of the exchange. She did note that they would like to do the carryback and other provisions, but that they do not have a way to pay for these provisions. Ms. Black discussed the deficit reduction commission and said that the commission is supposed to report back at the end of the year with recommendations for cutting the national deficit. In response to a question from David Gasson, Housing Advisory Group, on the commission, Ms. Black said that the genesis of the commission was to have the commission provide a take-it-or-leave-it recommendation similar to the Base Closing and Reassignment Commission. Now, however, it has evolved into a commission that would provide a set of recommendations and not on a take-it-or-leave-it basis. She said the national debt situation will be what pushes Congress to act, ultimately. She said a lot of what happens on election day may play a role, but the commission will be a convenient place to lay blame for whatever actions need to be taken.

Ms. Black commented that our fiscal spending is not sustainable and whether there are spending cuts, tax increases, or a tax reform component, all will be considered. She said that we need to think more globally and that housing concerns are about building a community. She said she is not sure what the answer is, but she encouraged the industry to think further about this and more creatively on how to establish the development of communities. She noted that because the LIHTC was the right answer in 1986, it may not be the answer for 2011.

Ms. Bazel noted that we are lucky that section 42 is permanent and that we do not have to fight for an extension of the program every year – other programs are not so lucky.

A question was raised as to whether the Bush middle class tax cuts will be extended this year. Ms. Black answered that there were a lot of things that should have already been done this year, *e.g.*, an AMT patch. She said the real question is a matter of timing and she suspects that it will be extended until after the election. Ms. Kerrigan added that she thought the House could send a package in July, but she thinks it will die until after the election. Ms. Kerrigan also noted that there are several items exempt from pay-go under specified conditions. If those conditions are met, then perhaps a bill could pass. She also said there is a small chance that we could see the estate tax return to the pre-2001 level even though many Senators do not like that result.

Another question was asked regarding past year's appropriations for the Housing Trust Fund and whether there would be more to come. Ms. Kerrigan stated that the \$1.065 billion in the extenders bill would probably be the only thing done on this issue this year.

Mike Novogradac, Novogradac & Company LLP and Housing Advisory Group board member, asked the panel whether a value added tax was inevitable. Ms. Kerrigan said that there has been some concern about a value added tax. She said some thought that if we were to seriously consider a value added tax that it would have been in the bill. She noted that it has become a very touchy issue and she thinks that some did not understand former Federal Reserve Chairman and current White House economic advisor Paul Volcker's proposal would have also made changes to the current income tax before adding a VAT. Ms. Black added that the initial reaction to a VAT proposal by members is a resounding "no." Although, she said, it is strange to hear some who are opposed to the VAT, support a retail sales tax.

Bob Moss asked the panel whether they see the extenders bill being enacted before the July 4 break. Ms. Black said that her guess was yes.

Another question raised was whether money from last year's stimulus package not yet spent would be redistributed. Ms. Kerrigan said that the stimulus package was intended as a two-year bill and that there is a lot of money still to be spent, so we would need to wait and see.

Mr. Novogradac asked whether we could expect to see any additional action on the energy exchange program. Ms. Kerrigan responded that at some point we will have an energy bill on the floor, but that it is unclear as to how they should proceed and whether they will open the door to energy provisions in the extenders bill. Ms. Black added that they are expecting, easily, 300 amendments to the extenders bill and that she would not be surprised if an energy provision would be included. She said wish lists can be filed, but until there are offsets to pay for them, there is not much there.

Bob Moss noted during the program that some big take aways from the panelists are that we need to be thinking creatively about how to improve the LIHTC program. We know from last year that the industry needed consensus; we know that costs are going up generally, and are also specifically affecting tax credit properties, and we need to plan for the next twenty years and beyond. Bob asked members for their thoughts on how to improve the program. Among the comments received were: bifurcate utilities from rents to address rising utility costs; think about the LIHTC as part of a larger community – as we go forward the credits will need to be used in connection with other programs to get properties done; help residents get services to help themselves; go back and look at the mechanics of the program and alternative funding carefully before making Hill asks; and think about ways to address the lack of geographic disbursement, including ways to entice investors to get into rural areas. David Gasson noted that we have a strong program and we do not want to start over – we need to look for good changes to an already stable and effective program.

Steve Wallace, Nixon Peabody LLP and Housing Advisory Group board member, introduced Carol Galante, Deputy Assistant Secretary at HUD. Ms. Galante first stated that the Secretary often makes note of the fact that walking into the HUD building is like walking back in time both in terms of the physical building and in terms of its financial knowledge, but they are working to improve this. She said they have been working hard with HUD's sister agencies and the White House on future housing programs. One such program is the Federal Housing Administration (FHA), multifamily insurance program, on which they are working to make more usable and affordable. She said they are seeing a surge in activity – they have done more this year already than in all of last year in terms of FHA insurance. Ms. Galante noted the FHA reform bill, with respect to which there has been a discussion of increasing the loan limits. She said they have done a lot of work administratively at HUD to increase the loan limits, but they can only do so much without a legislative change.

Ms. Galante next discussed two signature initiatives on which HUD is currently working and on which she would like the industry's thoughts and inputs. The first is the Choice Neighborhoods Program, which will build on the success of the Hope VI program to provide support for the preservation and rehabilitation of public and HUD-assisted housing. A pre-notice describing what will be needed for the application has been issued. Also, a bill has been introduced that would authorize permanency of the Choice Neighborhoods Program. The second initiative is PETRA, initially called Renting Rental Assistance (TRA), which would provide the ability to trade operating capital for a project for Section 8 assistance. This initiative, said Ms. Galante, would preserve public housing by enabling housing authorities to tap into additional funding. It is an opportunity to bring public housing into the mainstream of how housing is generally financed, she said. Ms. Galante said she would like to engage the industry in a conversation about how to make this program work and thinks that dialogue with the industry would prove very helpful. She said there is a long way to go with this program and a lot of work left to do. Ms. Galante specifically asked the industry to share any barriers that we see to the program, so that they can be overcome. Lastly, Ms. Galante commented that they are doing work across agencies on the LIHTC program. The administration has recently turned its attention to how to get balanced housing policy in this country, *i.e.*, encouraging home ownership, while understanding that there is a need for rental housing. She asked that we continue to feed HUD ideas.

In response to a question on whether HUD anticipates rents under PETRA reflecting fair market rents (FMR), Ms. Galante stated that rents will partly reflect the competitive market, leaving discretion to adjust to what is needed to make the property work. She said there are many places where the market rent will not be enough to pay for everything needed and the program leaves flexibility for exceptions in these types of circumstances. Ms. Galante further noted in response to a question that preservation of existing properties should be a high priority. She said it is a lot less expensive to maintain what we have than create something new, stating that now is the time to focus on recapitalizing existing stock.

Ms. Galante next mentioned that HUD is currently undertaking a study looking at what is happening as LIHTC projects hit year 15. They are trying to understand what is going on with that stock and how that adds to preservation needs through a major survey of developers and current properties.

Mr. Novogradac questioned whether Ms. Galante had heard in any meetings discussion of making the 9% exchange permanent. Ms. Galante responded that any such discussions would be "news to her" and that she is authorized to say that the administration has no intent to make the exchange permanent.

Ms. Galante next referenced the administration's request for 5% budget cuts across all agencies. She said this is obviously to be taken seriously and they will need to look at all programs seriously. She also said, in response to a question regarding whether public housing could be done using the LIHTC, that PETRA could be used to leverage debt with Section 8 and that the LIHTC could be an additional resource if the property needed rehabilitation. She also noted that they need to level the playing field between for-profits and non-profits. Ms. Galante last stated, in agreement with a comment on the 4% credit, that they need to make the 4% credit work more efficiently.

The last panel of the meeting was made up of industry experts and they began by discussing how state agencies are handling the current state of affairs. Ms. Dewey, from the Virginia Housing Development Authority, said that it has been a very busy two years. She said a big issue for them has been trying to fully utilize TCAP and the exchange programs, noting they are fortunate to be in Virginia where they are still seeing a demand for the credits. Even in Virginia, though, Ms. Dewey said they are still feeling the effects of the state of the economy. She said the cross-cutting measures are a newly added element to the programs. She also noted that some of the 4% deals are still not closed and that all applications that came in had to include the exchange program.

Deborah VanAmerongen next commented that the role of the state housing agencies has changed dramatically in the last few years. They had to adapt quickly to the fall out of the markets and a number of states did a very good job utilizing the new programs. She noted that the U.S. Government Accountability Office is looking at how states used the exchange and TCAP funds. She hopes states are not chastised for their use of the resources available to them since they were required to adjust so quickly to the new programs with very little guidance from Treasury or HUD. Ms. VanAmerongen stated that she thinks most states will continue to utilize the exchange program the way they used it last year if extended under the extenders bill, which seems likely.

Meg Manley next spoke. By way of example of the changing economy, she said they had recently been awarded a 9% deal priced at \$0.72 and that they had offers of up to \$0.78. She said this is the good news. The bad news, she said, is that the equity for bond deals is just not there. The company has had to change its path on the 9% side. Ms. Manley noted that the 4% and 9% deals are very different deals. She said they are lucky to be in Baltimore because they have Community Reinvestment Act (CRA) funding needs, but underwriting is still tough, competition is still tough, but they are seeing more investment interest.

David Salzman noted that we have come a long way since the downturn in the market in 2008, even though we are not back to where we were previously. He said losing Fannie Mae and Freddie Mac as investors was a big deal for the industry. There has been an increase, however, in the number of investors who are non-CRA, such as insurance companies. In the beginning of 2009, everyone was scrambling to get new investors and the demand finally went back up when the yield got back to 12, 13%. Mr. Salzman questioned what would happen when we no longer have the exchange program – will yields continue to fall and possibly below 12% - at what point will investors leave the program? Mr. Salzman said he has seen yields go up and come down and that it is all connected to the markets, the debt crises, and other economic factors.

Tony Freedman next asked the panel what they foresee for the immediate future with respect to the TCAP and the exchange program and what we could be doing to make the exchange work better. Ms. Dewey responded that the TCAP and exchange program are working pretty well, but that it is a shame that so many resources were needed to implement the programs for just one year of TCAP. In general, though, it has been very helpful. Many deals could not have gone forward without the programs. Ms. VanAmerongen said that the programs worked and that they were needed at the time they were put out. She said that overall they were a success, but that some states made them more complicated than they needed to be. Ms. Manley commented that she was thrilled to hear that there was no conversation to make the exchange permanent. She said the controls put in place by the private sector are what make the program so successful – the program needs the private partnership. At the time, though, the exchange was a brilliant and swift way to support affordable housing when it was needed, said Ms. Manley. Mr. Salzman said he has heard stories about states funding deals with 100% exchange money and he agrees this is not a good use of the exchange money. He does, however, feel that it is disheartening to hear that the administration is not considering making the exchange permanent because he feels the exchange money is still necessary to make deals work. Mr. Freedman commented that he was hoping to see states use the exchange money to leverage equity, but that the funding in some cases proved to be too powerful. Mr. Salzman responded that many states were very smart about using the exchange money and they did a good job of leveraging equity. Ms. Dewey commented that Virginia wanted to use the exchange money to leverage equity and that the public/private partnership has worked extremely well.

Ms. Manley rounded out the panel discussion by commenting that the LIHTC program is a wonderful program and that we should be focusing on how to make it work better.

In response to the many discussions on how to improve the program, we would encourage you to think creatively and send us emails with your ideas. You may forward your suggestions and any other relevant comments to DGasson@housingadvisorygroup.com. We look forward to receiving them.

Based on feedback thus far, we believe our 13th annual Housing Advisory Group meeting was a great success. We would like to thank our panelists and members for participating in this year's session as well as for your continued hard work supporting the program. We would also like to single out Allison Marino for everything she does to make this meeting such a success.

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