



We again had another informative and successful Housing Advisory Group (HAG) Affordable Housing Congressional Forum in Washington, DC, on June 12, 2008. Highlights of the Forum included comments by Speaker of the House Nancy Pelosi (D-CA); Financial Services Committee Chairman Barney Frank (D-MA); Jon Sheiner, Legislative Director for Ways and Means Committee Chairman Charlie Rangel (D-NY); and John Phillips, Senior Policy Advisor to Senator John Kerry (D-MA). Senator Kerry had been scheduled to speak to the group, but was called back to the state for a funeral. Also attending were special guests Deborah VanAmerongen, NY Commissioner of Housing; Carmel McGuire from the National Association of Home Builders, and Denise Muha of the National Leased Housing Association. We also had an excellent panel from the affordable housing industry who shared with us their expertise on the current issues facing the affordable housing market today and their opinions and perspectives on the low-income housing tax credit (LIHTC) legislation. Panelists were Jeanne Peterson, Reznick Group, Bob Greer, The Michaels Development Company, Pat Sheridan, Volunteers of America, and Dave Heller, The NRP Group LLC. Also lending his expertise was HAG board member David Reznick of The Reznick Group.

As we expressed during the meeting, we would like to give a special thanks to Senator Edward Kennedy (D-MA) and his staff for their continued assistance in helping make the Congressional Forum a success, including their help in securing the room for the Forum. Our thoughts go out to Senator Kennedy during this difficult time.

Bob Moss, Boston Capital Corporation and Chairman of the Housing Advisory Group, and Barbara Pate, Davis & Harman LLP and counsel to the Housing Advisory Group, opened the Forum by speaking about the current affordable housing market and legislative environment. Bob commented that the LIHTC and affordable housing, generally, are facing a difficult time, with the market burdened by the corporate alternative minimum tax (AMT) and the subprime mortgage crisis. He noted that the need for investors is at an all time high. Bob remarked that it is fortunate that Congress is considering housing legislation, including the modernization legislation, and applauded the possibility that it might be completed by the July 4th congressional recess. Barbara Pate noted that the timing of this year's meeting was impeccable as Congress is on the cusp of action on the housing modernization legislation and, while there are many moving pieces that still need to be put together before passage of the bill, the LIHTC pieces are non-controversial.

Jon Sheiner, who has been the lead congressional staffer working on, and developing, the affordable housing modernization legislation, enthusiastically stated that the legislation is getting closer to passage, noting that the LIHTC provisions are the "tail" on the "dog," i.e., the larger housing legislation, which would create an independent regulator for the GSEs and which includes, among other provisions, the Federal Housing Administration program provisions and the affordable housing trust fund provisions. Mr. Sheiner said, "As soon as the dog starts to run, we will be attached to it and will run with it." Mr. Sheiner said Chairman Frank and Chairman Rangel have met and are "getting the tail ready" to be attached to the larger bill. He also noted the LIHTC provisions should be resolved quickly because Senator Maria Cantwell's (D-WA) bill, which is very similar to the House-passed provisions, has been favorably received by the Senate. Mr. Sheiner said he hopes that we can "crack the champagne in early July."

Mr. Sheiner commented that that this legislation builds on 22 years of experience and that they worked with groups from all different perspectives and all of which have interests in making sure that the LIHTC program is working efficiently and who are dedicated to making it work. In this respect, he hopes that the legislation will provide everyone with at least 95% of what they want and need. In 1986, no one realized that the program would be where it is today. He said, in developing this legislation, they looked back at the 1986 Act to determine which provisions can be left as they are and which need changes. He acknowledged that repealing AMT with respect to the LIHTC is probably the most important change that must be made and that this was apparent even before the market downturn. Mr. Sheiner touched on other items of high importance -- including the repeal of the recapture bond rule and the repeal of the 10-year rule for acquisition credits; the ability for states to provide up to 30% more credits in designated areas (the 130% rule); extending the time limit for meeting the 10% test to one year; and allowing states and cities to recycle bonds without credits.

Mr. Sheiner noted the strong support of Chairman Rangel for the LIHTC provisions and he added that they have the support of almost all stakeholders, which should ensure the LIHTC provisions being included in the larger housing package. However, Mr. Sheiner noted, as a disclaimer, that they do not know what, if any, concessions are being made that could potentially cause the LIHTC provisions to not move as smoothly as expected. Mr. Sheiner addressed concerns that the White House may have some issues with the bill, stating that, while some issues have been raised with respect to the tax side of the bill, he does not think that these issues have anything to do with the LIHTC provisions.

In responding to questions from the group, Mr. Sheiner said that the bill will not change area median income (AMI) from 60/40 to 80/20, stating that the rule had previously been 80/20 but that there were problems with continuous compliance. Previously, Chairman Rangel suggested the change in the rule from 80/20 to 60/40 and after giving it additional thought this time around, Mr. Sheiner stated that Chairman Rangel was not comfortable moving it back to 80/20. Mr. Sheiner said that the availability of bonds will hopefully help those individuals in the higher area median income level between 60% and 80%. In response to this, a question was raised about military personnel who barely go over the 60% AMI limit. Mr. Sheiner said that this issue has been raised in the past, but that Chairman Frank has previously maintained that military housing issues should be addressed in the Defense Department budget and not through the LIHTC program. However, Mr. Sheiner acknowledged that this is an issue that needs to be resolved.

Mr. Sheiner also expressed, in response to additional questions, that he was hopeful that they will be able to fix the 9% credit, but that they will not be able to fix the 4% credit because of the cost. Concerns with the utility allowance issue also were raised. Mr. Sheiner said that he did not think there would be time to address this issue in this bill, but he said he recognized the problem. Lastly, a question was raised about the general public use rule, in response to which Mr. Sheiner stated that the IRS and Treasury Department representatives with whom they spoke do not clearly understand the rule and that clarification in that respect was needed.

John Phillips, Senior Policy Advisor to Senator Kerry, spoke on the overall housing bill generally, stating that the bill will include FHA reform, GSE reform, and the LIHTC provisions, among others. Mr. Phillips also noted that they were hopeful that a provision for \$10 billion for mortgage revenue bonds this year will be included in the bill. He also expressed that the AMT provision was strongly supported in the Senate. Mr. Phillips expressed that, while there is no silver bullet to resolve the housing crisis and that this legislation will not be able to solve all of the problems, this is a good step in the right direction.

Next, Chairman Barney Frank spoke, expressing that they should be able to get through the comprehensive housing package before the July 4th recess. Chairman Frank said that in 2005 he spoke with Chairman Rangel, whom he called the single greatest advocate for the LIHTC program, about how to harmonize the affordable housing programs. They acknowledged that no single program provides enough subsidy for the affordable housing programs. Chairman Frank believes that this bill does the maximum to integrate the programs. In this respect, Chairman Frank said that they need to focus on doing the maximum they can to preserve tenancies, noting that annual vouchers do not help build housing. Chairman Frank also expressed the importance of energy conservation and that there is a residential component to energy consumption. He said that it is important that they provide incentives to improve, or mandate improvement of, where appropriate, a building's energy consumption. In response to a series of questions and comments made to Chairman Frank, Chairman Frank suggested that a unified and clear suggestion should be provided to him and his staff with respect to the reporting requirement to HUD and the rural preservation provisions.

Speaker of the House Nancy Pelosi next addressed the group, first speaking about her testimony in 1989 to keep the program going when the LIHTC was facing a sunset and thanking Chairman Frank and the HAG members for their leadership in helping to make the LIHTC successful. Speaker Pelosi said that in 1989 she had to petition then Ways and Means Committee Chairman Dan Rostenkowski to keep the LIHTC program from expiring. The Chairman asked the Speaker if she had the votes to do so, to which she said she did. Chairman Rostenkowski told her that she needed to prove that she had the votes. Beyond having Members sign a letter acknowledging their support, Speaker Pelosi sat each member down and explained the program to them so that when Chairman Rostenkowski followed up and randomly tested the Members' support, which she knew he would, they would each be knowledgeable about the program, demonstrating to the Chairman how important the program was and how serious they were about it.

Speaker Pelosi expressed her gratitude to, and pride of, Chairman Frank for the leadership he has provided for the LIHTC program and for his recognition of the role of both the public and private sector in the program. She noted that she heard the Chairman's previous discussion of the rural preservation provisions and that they have developed a rural working group, acknowledging the importance of the rural housing initiative. She noted that this is a difficult time for many, with a disparity both of income and of equity, and that many Americans are afraid of losing their homes and of losing their standard of living. She thanked the group for their leadership and role in providing affordable housing to those in need and acknowledged the urgency of needing to get the bill passed, stating that she "does not see how they can go home without having this bill sent" to the president for his signature.

Throughout the meeting, between speakers, the panelists provided their expertise on the current market and the housing legislation. The first topic of discussion among the panelists was prioritization of the provisions in the bill. Jeanne Peterson, Reznick Group, expressed that AMT relief was the most significant provision in the bill. She also noted the 9% credit fix, the 10-year rule, the credit cap increase, and tax-exempt bond recycling as important provisions. Jeanne noted that there had been a lot of talk about the credit cap increase when the provision was first introduced and that it seemed like an odd time for a 10% increase. A lot of people worried that states would not be using all of the credits that could be allocated, but Jeanne stated that demand is higher for credits than in the past, indicating that states will be able to use the credit increase. Each of the other panelists, Bob Greer, The Michaels Development Company, Pat Sheridan, Volunteers of America, and Dave Heller, The NRP Group LLC, echoed Jeanne's views.

Bob Greer noted that in this market of increasing structure costs and reduction in capital, things are obviously getting more difficult and the most important provision, agreeing with Jeanne, is AMT relief and that fixing the 9% credit was a close second. Bob also said that it would be very helpful to use tax credits in Section 8 Moderate Rehabilitation developments. Pat expressed concern that AMT relief would not be enough and that he thought the 10-year rule, fixing the 9% credit, the provision of soft debt, and providing anything that unfreezes rents were also very important. Dave again agreed that AMT relief was the most important provision. Dave also thought that giving the states the flexibility to provide up to an additional 30% in credits in designated areas, while he was originally a little weary, will be a real opportunity for the program. Dave also agreed that the cap increase at this time could potentially cause a return of credits in 2010, but he ultimately thought that there was a real opportunity to talk to the states and have a "flight to quality."

The panelists discussed possible concerns surrounding allowing the states the flexibility to provide up to 30% more credits to properties in certain designated areas. Jeanne noted that a number of states do not look forward to having this ability for fear of being subject to political whimsy. However, she also said that many states have relatively good subjective criteria for determining where to give 130% and it was expressed that states are in a better position to determine where to give the 30% bond than HUD determining Qualified Census Tracts. Bob Greer said that he was nervous that "best relationships" will come into play where flexibility such as this is given. Pat likewise expressed concern about this ability being too discretionary. Dave expressed that he thought this was an opportunity for the industry to come up with a "white paper" describing how this 130% rule can be implemented in such a way that it is given to those most in need. He suggested that guiding principles for granting the additional 30% be developed and provided to states. Lastly, the panelists discussed, in response to a question posed by Al Scott (The NRP Group), what provisions they would include in the bill if they could add anything to the legislation. Among the items discussed were adding a provision to take care of those individuals who fall between 60% and 80% of AMI and adding a provision to address the issues surrounding utility allowances.

Overall, the Housing Advisory Group annual meeting was a great success. Special recognition for another outstanding meeting goes to Allison Marino of the Housing Advisory Group and our superb tax counsel at Davis and Harman, Tad Davis, Barbara Pate and Michelle Garcia. Thank you to all who were able to join us in Washington, DC last week and we look forward to the weeks ahead and, hopefully, to being able to "crack the champagne" before the July 4th weekend.

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