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Reaction to Uncertainty in Affordable Housing Industry Brought on by Trump Election

The 2016 Election has created more questions than answers for the affordable housing industry. Very little is known about President-elect Trump's vision for affordable housing. On one hand, Mr. Trump has described himself as an advocate for low-income Americans seeking to bring jobs and security to the inner cities. On the other hand, he campaigned under the banner of comprehensive tax reform as well as reducing spending on public subsidies. The lack of clear direction, coupled with rising interest rates since the election, has created a tidal wave of uncertainty throughout the affordable housing marketplace.

The following advisory summarizes the current outlook for the Low-Income Housing Tax Credit (LIHTC) market and suggests short- and long-term strategies that may be effective for keeping deals on track despite the overwhelming marketplace uncertainty.

I. Outlook

The current marketplace uncertainty will likely persist into the first quarter—and possibly second quarter—of 2017, as the Trump Administration takes office and prioritizes their policy goals. Comprehensive tax reform is clearly on the agenda, but it is competing with other reform goals, including the repeal of the Affordable Care Act and improvements to infrastructure, for Capitol Hill's attention. Once President-elect Trump begins to present his vision for providing affordable housing as well as rebuilding blighted communities, uncertainty should begin to wane.

While the Republicans will have clear control of the US House of Representatives, they do not control the 60 seats needed to pass most legislation in the US Senate. Still, Senate Republicans may rely on budget reconciliation to enact reform, as was the case when enacting the Economic Growth and Tax Relief Reconciliation Act of 2001 and the Jobs and Growth Tax Relief Reconciliation Act of 2003, collectively known as the "Bush tax cuts."

In addition, comprehensive tax reform was one of President-elect Trump's major platforms. A prevailing opinion is that he will use the House Republicans' tax reform blueprint as a starting-off point. Most importantly, the House Republican blueprint would decrease the corporate tax rate from 35% to 20%. Any reduction in corporate tax rates will likely decrease the demand for tax credits as well as the value of tax losses generated by LIHTC projects, resulting in a double whammy on tax credit pricing and, therefore, on the amount of tax credit equity that can be raised. The uncertainty as to when corporate tax rates will be cut and by how much has caused many investors to reprice deal terms, delay closings or halt tax credit investments entirely. In addition, rising interest rates and Treasury note yields continue to exacerbate the effects of uncertainty by limiting access to, and raising the price of, debt.

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II. Strategies to Save Deals

Developers seeking to move forward despite the market uncertainty should consider the following strategies:

A. Short-Term Strategies

1. Filling funding gaps with various sources of debt, including deferred developer fees; deferred contractor profit; seller carryback financing; AHP funds; foundation grants; TIFs; and other state and local debt sources (if available)
2. Privately placing subordinate debt (up to a 1.05 DSCR)
3. Seeking permit and impact fee deferrals
4. Negotiating tax abatements and PILOTs
5. Sharing the risk of future tax law changes with investors through equity adjusters that move up or down depending on the level of corporate tax rate cuts

B. Long-Term Strategies

1. Working with legislators to enact accelerated depreciation to offset the reduction in tax rates
2. Exploring non-traditional, soft debt and grant sources
3. Pursuing integrated development strategies that encompass low-income, workforce and market rate housing, and seeking an expansion of subsidies or other funding for workforce housing
4. Utilizing tax exempt debt in a rising interest rate environment

III. More to Come

Katten's Multifamily, Affordable Housing and Community Development Practice will continue to publish additional advisories as developments occur. Additionally, Ken Lore and Glenn Miller will present on this topic at the [National Housing & Rehabilitation Association 2017 Annual Meeting](#).

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