

'Pain & Confusion' In Affordable Housing Market Under Trump

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Law360, Minneapolis (January 31, 2017, 3:06 PM EST) -- The affordable housing community is scrambling to figure out how to ensure current projects stay on track and how to find funding for future construction amid a host of uncertainties in Washington, chief among which is concern about the corporate tax rate being lowered, according to lawyers and developers.

President Donald Trump said repeatedly during the campaign that he'd like to lower the corporate tax rate from 35 percent to 20 percent, and lawyers say that if that were to happen corporations that invest in low-income housing tax credits would have less incentive to do so, since such investments typically go on the books as losses and the lower tax rate would thus make such "investments" less attractive.

But developers are also concerned about the future of federal funding for affordable housing, and some are finding they have to look to local sources or even decide to call their projects off.

"Pain and confusion" is the way Robert Buente, president and CEO of affordable housing developer 1010 Development Corp. in Los Angeles, described the current environment in the affordable housing community.

"The uncertainty of the corporate tax rate has adversely affected the pricing for the low-income tax credits," Buente said.

Affordable housing relies heavily on investments from corporations, which build losses on such investments into their balance sheets.

But if the corporate tax rate falls, companies don't get to generate the same levels of write-downs overall, which makes those "investments" less attractive. Losses, of

course, cancel out other gains on the corporate balance sheet, and such tax credits for affordable housing generally depreciate, which is why they are viewed as ways to offset other tax.

“The principal way equity or capital is raised to build an affordable housing project is from investments made by corporations to a partnership that owns, or that will be developing, that affordable housing,” said Patrick D. McCalla at [Rutan & Tucker LLP](#). “The reason they’re willing to invest their capital into the partnership is to receive the tax credits and the tax losses.”

The uncertainty over Trump’s next moves in Washington is playing out in various guises. On the one hand, investors are pulling back because they are worried they won’t reap the same benefits if the corporate tax rate drops.

That, in return, has forced developers to go on the hunt for cash, or scale back size or amenities — or even call off projects.

McCalla said he’s seen projects on hold, and Keith M. Poliakoff of [Arnstein & Lehr LLP](#) said the credit markets for affordable housing have tightened.

“My clients are not bullish about the future of the affordable housing deals under the present system,” Poliakoff said. “The uncertainty of the tax reform has frozen the credit markets and developments that were tight financially are being shelved for now.”

To put those difficulties into perspective, Buente said a Los Angeles project his company is working on has just had to lower its anticipated preliminary investment income by 12 percent.

“We now have to come up with about \$400,000,” Buente said. “And that money doesn’t grow on trees. Our rents are capped. Our expenses are not.”

In the case of that project, Buente said the company has to look to other sources, a major one being the city of Los Angeles, and he feels confident Los Angeles will provide additional capital to help keep the project afloat.

“Everything has been priced at 35 percent for the last 10 years. Now everything is priced at 20 percent,” Buente said. “Everybody’s in uncharted waters. Everybody.”

[The White House](#) couldn't be immediately reached for comment.

Lawyers say part of the problem is that developers for years have built into their financing model an assumption that investors will buy tax credits based on the 35 percent corporate tax rate. But that may be changing, and investors are spooked.

“If you reduce [the corporate tax rate] from 35 percent to 20 percent, the value of those losses has been reduced almost in half,” McCalla said. “The developers are in a bind, particularly the ones that have had projects in development for two, three years. It takes that long to get through the various approval processes. They’ve budgeted their development based upon assumptions. ... It puts a big hole in the budget.”

Of course, the tax rate is just one concern. The future course of the [U.S. Department of Housing and Urban Development](#) and, more broadly, of federal funding for affordable housing is a big question mark.

Federal funding falls broadly into two categories: funding for building new affordable housing and rental assistance for individuals who are already in housing.

And Richard M. Price of [Nixon Peabody LLP](#) said the former is generally the first to be cut when cuts happen.

Part of the concern, of course, also revolves around how Ben Carson, Trump’s pick to lead HUD, will lead that agency.

“The uncertainty and the inexperience of the people Trump has appointed, including obviously the secretary of HUD, make everybody nervous, and when people get nervous, they tend not to invest, they tend not to move forward,” said Zack Wasserman of [Wendel Rosen Black & Dean LLP](#).

And that's forcing developers to look locally.

Alameda County in the Bay Area took the issue into its own hands and got a \$550 million measure for affordable housing on the ballot, which the voters passed.

“The money’s going to have to come locally, And it is,” Wasserman said. “The both real and perceived need for affordable housing in the Bay Area is tremendous. The general feeling in the Bay Area of standing up to resist and oppose many of Trump’s measures will actually flow to the affordable housing area as well.”

While certain developers in certain cities have had success in finding local funding, not all have been so lucky. If the corporate tax rate does drop significantly, that could be enough to call off some projects that aren’t able to bridge the gap with local financing, lawyers say.

“I think a lot of them won’t pencil out. I know that some people are looking at foundations that have interests in that area,” said Dusty E. Kirk of [Reed Smith LLP](#). “It will be a challenge.”

--Editing by Rebecca Flanagan and Brian Baresch.

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