Multifamily insiders zero in on the most important legislative issues to be tackled in 2013

By Keat Foong, Executive Editor

With the 2012 elections over, the government is getting down to business to tackle some of the big issues that were pushed off the table while politicians were running for office. So, 2013 may well be a significant year, in which many of the critical concerns that have been discussed in the past few years finally come to a head. The “Big Three” legislative areas of concern this year for the multifamily industry are indeed far-reaching: Tax reform, the survival of the Low Income Housing Tax Credit program and capital markets reform.

The National Apartment Association (NAA) tells MHN that taxation is likely to be the number one topic for the association this year, as whatever was not resolved by the end-of-year “fiscal cliff” maneuverings are likely to be pushed over to 2013. For the National Association of Home Builders (NAHB), the preservation of the Low Income Housing Tax Credit supplants taxation as the number one priority. And for the Institute of Real Estate Management (IREM), as of last year, the fiscal cliff was still concern number one, followed closely by taxation issues. GSE reform follows in third place for all three groups when asked to identify their top three areas of attention in 2013.

As far as fiscal cliff discussions, IREM members are desirous of a strong economy and healthy job growth numbers, which in turn has positive implications for real estate occupancies, noted Chuck Achilles, IREM chief legislative and research officer, at the end of last year. Achilles said that the association would like to see an avoidance of the “fiscal cliff,” combined with deficit cuts and extension of tax cuts. “[IREM] members want to feel good” about the place in the economy for small businesses, about job creation and about the direction of the country, he said.

Achilles names taxes, and in particular, capital gains taxes and income taxes, as the second most important legislative area of concern for IREM. If the Bush tax cuts...
are not extended, capital gains taxes could rise from 15 percent to at least 20 percent if not higher, while ordinary income taxes for the top income bracket could revert, from the current 35 percent to 39 percent. Taxes on carried interest, which have been reduced to 15 percent, could increase. Such increases on the taxes on ordinary income, capital gains and carried interest will act as disincentives to invest in real estate, argues Achilles. “Our members manage for property owners. They want the investors to feel good about investing in real estate,” says Achilles.

IREM is also keeping an eye on new laws pertaining to depreciation. There is a question mark as to whether the depreciation period allowed for asset writeoffs, currently 30 to 40 years and previously 10 to 20 years, will be changed this year. The higher the number of years required for depreciation, the lower the annual recapture and consequently the higher the unearned income tax. Achilles also mentioned the Affordable Care Act as a negative, as in effect it means an increased tax of 3.8 percent on unearned income over $250,000.

As to IREM’s third priority, it is to ensure liquidity in the multifamily capital markets. Achilles says that financing is easy to come by in some markets, but still very difficult to obtain in other markets. The Dodd Frank Act and Basel III bank regulations have required lenders to more closely scrutinize loans and impose greater due diligence and borrower requirements, says Achilles. The result is it is more difficult to finance real estate and business development.

The maintenance of the carried interest tax rate, and making sure that there is a federal backstop under any GSE reform efforts, would be the three top multifamily legislative priorities this year for NAHB. “We will be fighting tooth and nail to protect the LIHTC” program, vows Jim Tobin, NAHB’s senior vice president of government affairs. LIHTC is the most successful
NAHB foresees its second priority this year will be to push for maintaining the current tax treatment on carried interest in the tax code. Under the current system, carried interest is taxed at the lower capital gains rate of 15 percent rather than as ordinary income at 35 percent. The current tax treatment on carried interest—the profits of investment managers, whether hedge funds, private equity or real estate partnerships—has been demonized as a sweet heart deal for hedge funds. But the current tax treatment of carried interest is actually a “valuable tool” for multifamily development and investment, says Tobin.

NAHB’s third multifamily legislative priority for this year will be to ensure, ultimately, that there be a federal guarantee in the secondary markets for multifamily financing. Tobin says the government needs to reduce its exposure to the mortgage markets, as its current level of involvement is unsustainable. Nevertheless, “Let’s be clear—a federal backstop is critical to investments in the U.S. mortgage market,” adds Tobin.

Problems with single-family mortgages have been at the root cause of the mortgage crisis, and the multifamily side of the business for the GSEs has performed extremely well. Multifamily should not be “lumped” in with single-family housing in any wholesale reform of the GSEs, says Tobin.

The top area of attention for NAA for the next six to 12 months will be tax reform, assuming that the “fiscal cliff” negotiations have not resolved all the tax complications, says Greg Brown, NAA’s vice president of government affairs. Many of NAA’s members file on the partnership side of tax returns, and Brown says that one of the areas of focus in tax reform for NAA will be to ensure parity for smaller business owners. The association would like both corporations and individual taxation to be addressed together. Tax benefits to corporations should not be at the expense of real estate partnerships or be paid for by the smaller companies, suggests Brown.

“...the LIHTC.”

For example, NAA is watchful on the deductibility of interest payments on debt—which Brown argues is of concern to small businesses, since unlike public corporations, they have fewer possibilities for raising capital and depend on borrowing to finance their investments or businesses. In this regard, NAA will be opposed to a scale back of the deductibility of debt interest payments in the course of tax negotiations in Congress.

Leading NAA’s legislative agenda this year will also be the preservation of the LIHTC program. “That is a priority for us,” says Brown. Also important to the association is ensuring the continued availability of capital “to the multifamily industry at all times in all markets,” says Brown. He notes that a lot of rental housing will need to be constructed in the next decade, and consequently a significant amount of finance market liquidity will be needed to finance the development of—and investment in—multifamily housing. There should be a role for a federal guarantee, whether through Fannie or Freddie or some other entity, according to Brown. “It has historically been shown that the private market is not sufficient to meet the demand for multifamily financing.”

Besides tax reform, the survival of the LIHTC program and capital markets liquidity, regulations will continue to be a subject of close monitoring by NAA. Real estate is already highly regulated. “Our concern has always been that well-intentioned regulations do not lead to costly mandates that will increase the cost of multifamily housing or decrease its availability.”

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Committees to Watch

In the last Congress, multiple bills emerged addressing tax reform and capital liquidity. In the current congressional session, bills will have to be re-introduced on these same issues.

“There were 19 or 20 different bills on Fannie and Freddie reform. We are at the point where the legislation that are introduced are going to die,” said Greg Brown, NAA vice president of government affairs, at the end of last year. “What was on the table will cease to exist, and we will have to start all over again.”

“There were bills that we liked and that we did not like” introduced on all the priority items in the 2013 Congressional session, says NAHB’s senior vice president of government affairs, Jim Tobin. “These bills all expired at the end of [the last] Congress.”

Below are the congressional committees to monitor with respect to bills that will be introduced:

**Tax Reform:**
- Senate Committee on Finance
- House Committee on Ways and Means

**GSE Reform:**
- Senate Committee on Banking, Housing and Urban Affairs
- House Committee on Financial Services