The Shutdown's Wake

What to Expect from the Next Round of Talks, Risk Retention and TRIA

By Mike Ratliff

Last quarter's **Law & Policy** article examined policies impacting sustainable development and energy use, with an expectation that the Shaheen-Portman Energy Savings and Industrial Competitive Act (S. 761) would see a vote in September. But when Congress's failure to enact legislation that appropriated funds for 2014 triggered a government shutdown, it put the bipartisan energy act on ice for the time being. Today, all eyes are on the Hill as we approach Jan. 15—when funding allocated by the continuing resolution runs dry—and Feb. 7, the new debt ceiling expiration date.

From a macroeconomic view, things look good. The S&P 500 surpassed its all-time high less than 10 days after the resolution, and markets continue to set new highs on a weekly basis. Real estate transactional data suggests that 2013 will be a banner year. But while things appear smooth on the surface, uncertainty remains and is stronger than ever, as Tom Bisacquino, president & CEO of NAIOP, pointed out.

"You might say that the situation we see in commercial real estate is in spite of, not in reaction to, anything the government has done," Bisacquino said. "Every time we have one of these situations in Washington, it further erodes investor and developer confidence."

Nevertheless, with the caveat that anything is possible, Bisacquino remains optimistic for the next round of fiscal discussions this winter. With just 11 months remaining before midterm elections, GOP leadership is all too familiar with the polls, and is not looking to add any more hurdles in the race to hold the House and take the Senate.

"Even the furthest right wing of the government realizes that shutting the government down in February will do nothing to further their cause," Bisacquino added.

Bisacquino urges constituents to recognize that the main problem with our country's fiscal health is not the debt ceiling but rather the $17.1 trillion in U.S. national debt. On the positive side, the 2013 U.S. budget deficit was just $860 billion, the first time it has fallen below $1 trillion since 2008.

The decreased deficit resulted from a combination of sequestration and increased tax rates. While the non-targeted cuts have improved the balance sheet, the measure was not without negative impacts. These are particularly evident in Washington, D.C., said Jeffrey Kottmeier, director of research & analysis at CBRE | Global Research & Consulting.

"We are finally seeing impacts of sequestration on certain job sectors, namely the professional and business services sector, which includes many federal contractors," Kottmeier said. "August 2013 saw the first year-over-year decline in PBS jobs since early 2010."

The impact of the partial government shutdown will take time to materialize, but it will certainly have an impact on the economy, and in turn, commercial real estate. Current estimates predict a drag on real GDP growth in the 30 basis point range, according to Kottmeier. The unpredictability present in the country's economic health is also leading the Federal Reserve to continue to keep interest rates artificially low. Kottmeier's team at CBRE expects the Fed will put off any scaling back of QE3 until the debt ceiling is resolved.

"We believe that March 2014 is the most likely new target for tapering to begin, which is in line with recent surveys," Kottmeier added.

One can argue that uncertainty has the biggest impact on the finance side of real estate. Increased uncertainty translates into increased risk, which can make financing more expensive even if interest rates remain at low levels. While this has not led to price premiums yet, it is not out of the question, according to Steve Renna, president & CEO of the Commercial Real Estate Finance Council. One has to look no further than Fitch Ratings Inc. placing the U.S. government's triple-A credit rating on "rating watch negative" this October.

"If we continue to have this brinkmanship and small steps of extending debt ceilings, these moves to keep the government open, you are going to see that even if rates don't climb, risk factors may increase," Renna said.

As for the possibility of a debt default this February—something all sources for this article see as very unlikely—Renna said the biggest impact would be the way the rest of the world views our fiscal health. If countries begin to question why national economies are denominated in USD, we are in trouble.

"There are so many ripples in a default that you would need a three-day symposium to

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examine all the permutations of what a debt default would mean for global financial markets. None of it would be good," Renna said.

The Real Estate Roundtable is continuing to push Congress to try to avoid this type of crisis, as well as last minute policy making, in order to let the economy get its feet planted.

"But it seems that each time the economy starts to get some traction and starts to move in a positive way for several months, some policy of uncertainty—whether it is the super-committee deliberations or the fiscal cliff or the debt ceiling showdown or the recent federal government shutdown—causes the economy to stall," said Jeff DeBoer, president & CEO of The Real Estate Roundtable.

In addition to the big-ticket fiscal issues, the Roundtable is keeping tabs on other pieces of policy that could have an impact on the industry and general economic health. Banking regulators released a new round of proposals on Aug. 28 to implement Dodd-Frank risk retention language that would require institutions that package loans to retain 5 percent of the credit risk on their own balance sheets. DeBoer sees the reproposal as a step in the right direction, as it removed the premium capture cash-reserve account (PCCRA) provision, and allows the 5 percent retention to be accomplished both vertically and horizontally.

"There are, however, a number of issues that remain in the reproposal that we feel will unduly limit the ability of the CMBS market to reach its full potential," DeBoer added.

Of particular concern is the way that the reproposal applies risk retention in the case of a single borrower or a single buyer when there are no B-piece tranche buyers that can meet the 5 percent retention amount. This could make the regulation unnecessarily more costly for single-asset CMBS borrowers to move forward with a transaction.

Another piece of legislation on the Roundtable's watch list is the Terrorism Risk Insurance Act, which is set to expire on Dec. 31, 2014. TRIA plays a large role in keeping commercial real estate liquid, as the private insurance marketplace is unable to provide terrorism insurance in the amount needed for our economy to function. While the program is viewed as cost-free in the national budget, extending it is not a given.

"It will require a large education effort, but that is understood given the amount of new members in Congress, the time lapse since 9/11 and the lack of terrorist activity here in the U.S.," DeBoer said. "But in terms of a proactive policy agenda item that is important for the industry and economic growth, TRIA should be at the top of the list. This is something that Congress can do and that they should do. If Congress fails, it will have a tremendous negative impact on economic growth." CPE

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