



400 North Columbus Street
Suite 203
Alexandria, VA 22314
(703) 683-8630
(703) 683-8634 FAX
www.nahma.org

Selected NAHMA Policy Positions 111th Congress (2009-2010): June 2010

NAHMA Positions Key

Strongly Support: NAHMA will devote the highest level of staff resources to actively work to pass the bill. NAHMA may propose draft legislation on issues we “strongly support.” NAHMA will conduct grassroots advocacy, seek opportunities to offer congressional testimony, meet with members of Congress and/or staff, initiate and/or sign onto letters with industry colleagues, proactively send position papers to members of Congress and/or staff, seek coverage in the trade press or other activities to move the bill through the legislative process and into law.

Support: NAHMA is interested in passing the bill, but it is not among our highest immediate priorities. NAHMA will likely initiate and/or sign onto letters with industry colleagues, meet with members of Congress and/or staff, or other activities to move the bill through the legislative process and into law.

Neutral: NAHMA will not work in favor or in opposition to the bill.

Oppose: NAHMA is concerned about the bill and does not support its passage, but it is not among our highest immediate priorities. NAHMA will likely initiate and/or sign onto letters with industry colleagues, meet with members of Congress and/or staff, or other activities to prevent the bill from becoming law.

Strongly Oppose: NAHMA will devote the highest level of staff resources to actively work against the bill. NAHMA may propose alternative draft legislation on issues we “strongly oppose.” NAHMA will conduct grassroots advocacy, seek opportunities to offer congressional testimony, meet with members of Congress and/or staff, initiate and/or sign onto letters with industry colleagues, proactively send position papers to members of Congress and/or staff, seek coverage in the trade press or other activities to stop the bill from moving through the legislative process and to prevent it from becoming law.

Preservation and New Production

H.R. 1675, S. 1481: The Frank Melville Supportive Housing Investment Act of 2009

Sponsors: Rep. Christopher Murphy (D-CT) and Sen. Robert Menendez (D-NJ)

NAHMA Positions: Support

The act would provide assistance to private nonprofit organizations to expand the supply of housing for persons with disabilities through capital advances and contracts for project rental assistance, and it would also provide incremental vouchers to the Section 811 properties through Tenant Based Section 8. The bill would also modernize the capital advance program and the tenant selection process and increase tenant protections. The legislation would authorize a new pilot program to expand the supply of disabled housing through project rental assistance. Furthermore, the act would make technical corrections to Section 811 to increase project flexibility, authorizes appropriations for the new programs, and calls for HUD to issue new regulations and guidelines for the program within 180 days.

H.R. 1675 has been introduced to the House and has been referred to the Financial Services Committee. S. 1481 has been introduced in the Senate and has been referred to the Banking Committee.

H.R. 1989: Authorizing Rural Housing Section 538 Interest Subsidies for FY 2009
Sponsor: Rep. Shelly Moore Capito (R-WV)
NAHMA Position: Support

The act would reinstate the interest subsidies that were omitted from the FY 2009 Omnibus appropriations for the Section 538 rural housing loans.

The legislation has been introduced in the House and was referred to the House Financial Services Committee.

Update

H.R. 2336, S. 1379: The GREEN Act
Sponsor: Rep. Ed Perlmutter (D-CO), Sen. Sheldon Whitehouse (D-RI)
NAHMA Position: Support

This legislation is intended to create incentives and standards for improving the energy efficiency and sustainability of the HUD affordable housing portfolio.

Section 3 of the bill requires HUD to establish annual energy efficiency participation incentives for HUD programs. The legislation does not give specific directives to what kind of incentives should be created or how they should be implemented.

Section 4 of the bill determines the structure of HUD's energy efficiency and green building standards for new and existing housing. *No existing property will be required to comply with these standards unless the law or HUD provides a benefit or credit to the property through a federal program for compliance with these standards. New properties will be expected to comply with only the basic HUD energy efficiency standards. Under this section, both HUD and RHS have the option of applying whatever standards are established to Federally Assisted Housing and Programs.*

Section 5 of the bill establishes an energy efficiency and conservation demonstration program for multifamily housing projects assisted with project-based rental assistance to meet the basic HUD energy efficiency standards established in Section 4 of the legislation. For more information on this section, please see the legislative language in the attachment.

The rest of the legislation develops a number of pilot and/or incentives programs to improve the green and energy efficiency of the multifamily housing portfolio.

The House Financial Services Committee held hearings on this legislation in June 2009 and the legislation was included in H.R. 2454, the American Clean Energy and Security Act of 2009, which passed the House last year. The Senate does not plan to consider H.R. 2454 because they are writing their own climate change legislation.

The House Financial Services Committee has passed H.R. 2336. The legislation was amended to include H.R. 4099's "green dividend" and S. 2897's residual receipts usage for green improvements language. The utility reporting requirements for all multifamily properties were not included in this amendment. H.R. 2336 now awaits consideration on the House floor.

Update

H.R. 2847: Jobs for Main Street Act of 2010
Sponsor: Rep. Alan B. Mollohan (D-WV)
NAHMA Position: Support Inclusion of the A.C.T.I.O.N. LIHTC proposals

The Jobs for Main Street Act of 2010, as passed by the House, would provide additional appropriations for federal programs in order to boost the number of jobs in the economy. The House legislation also provided \$1 billion for the National Housing Trust Fund (NHTF). The Fund would provide communities with money to build, preserve, and rehabilitate rental homes that are affordable for extremely and very low-income households. The legislation also set aside \$65 million for project-based vouchers to support units built by the Fund.

The Senate amended H.R. 2847 in November 2009. The heavily paired down bill featured payroll tax breaks, bond-financing for state and local infrastructure projects, a small-business expensing provision, and an extension of federal highway programs only. The Senate Finance Committee's draft proposal of the bill also included a number of tax extenders, including the expansion of the LIHTC cash-exchange program to 2010 housing credits. However, Majority Leader Harry Reid (D-NV) decided to include the tax extender's portion of the Senate jobs bill as part of a manager's amendment to H.R. 4213, the Tax Extenders Act.

The House and Senate versions of the legislation were conferenced in February 2010. None of the provisions NAHMA requested/supported—the NHTF appropriations, the expansion of the LIHTC cash-exchange program to 2010 housing credits, the five-year carry-back for LIHTCs, and expanding the LIHTC investor base—were included in the final conferenced version of the legislation. However, the expansion of the LIHTC cash-exchange program to 2010 housing credits and the NHTF were included on the final version of H.R. 4213.

Both the House and the Senate passed a conferenced version of this legislation in March 2010. President Obama signed H.R. 2847 into law as P.L. 111-147 on March 17, 2010.

Update

H.R. 2876: Rural Housing Preservation Act of 2009

Sponsor: Rep. Lincoln Davis (D-TN)

NAHMA Position: Reservations on specific provisions

H.R. 2876 would require USDA to prepare and approve a long-term viability plan, a physical needs assessment, and create a financial plan for each project and develop a financial restructuring plan with preservation incentives. Under the proposed law, owners would be committed to long-term low-income rural multi-family housing usage for 30 years or the remainder of their loans and rents could not exceed 30% of adjusted income of the tenants. Finally, the bill would amend Section 542 to make voucher assistance available to each eligible household and permit USDA to extend rural tenant protection vouchers to families residing in foreclosed upon projects.

NAHMA's major concern is that restructuring would not be available to those who are involved in ongoing civil action to authorize the prepayment of the section 515 loan for the eligible project or a damages action against the Emergency Low Income Housing Preservation Act of 1987, unless they agreed to pay the lesser of 50% or \$100,000 from the damages. NAHMA opposes this because it would violate the settlement agreement and penalizes owners who exercise their legal rights to prepay. We feel the 30-year capital needs assessment is too far into the future to create a substantial outline of the property's needs for the period. We would like to recommend capital needs assessment for 20 years in order to refinance and restructure.

The bill has been referred to the House Financial Service Committee's Subcommittee on Housing and Community Opportunity.

The bill has also been included as Title VIII of H.R. 4868, the Housing Preservation and Tenant Protection Act of 2010. The objectionable language that would deny restructuring to those who are still involved in civil action to authorize prepayments was removed from Title VIII.

H.R. 3527: The FHA Multifamily Loan Limit Adjustment Act of 2009

Sponsor: Rep. Anthony Weiner (D-NY)

NAHMA Position: Support

H.R. 3527 would increase the maximum mortgage amount limitations under the FHA mortgage insurance programs for multifamily housing projects with elevators and for extremely high-cost areas.

The House passed this legislation September 15, 2009. The Senate has referred the bill to the Banking Committee.

Update

H.R. 4099, S. 2897: Energy Efficiency Modernization Act of 2009

Sponsor: Rep. Mary Jo Kilroy (D-OH) and Sen. Michael Bennet (D-CO)

NAHMA Position: Oppose

Both the House and Senate bills would create a green dividend program to help improve energy efficiency in federally subsidized housing and allow the use of residual receipts as loans to make energy efficient improvements/retrofits. The “green dividend” program in Section 2 is intended as a market-based incentive, whereby HUD owners can share the cost savings created by reducing the energy costs of their respective property under the terms of the program. The bill defines a “green dividend” as:

- An annual distribution equal to 50% of the annual energy cost savings resulting from the energy-saving measures conducted for the project;
- Any reasonable costs incurred by the owner in carrying out the energy saving measures; and
- In addition to the standard distribution that the owner of the project is authorized to receive from the project pursuant to regulations of the Secretary.

There are also reporting requirements that owners who receive green dividends must provide to HUD regarding the project, the utility cost-saving measures undertaken for the project, and the utility cost savings of the project. While NAHMA is intrigued by the proposed incentive-based approach, our members are unclear whether the benefits of receiving a green dividend would outweigh the associated application and compliance costs.

Section 4 of the House bill creates a complicated program that would allow HUD to make loans, funded from residual receipts, to owners of federally assisted housing projects for undertaking green retrofit measures. The language appears to give HUD authority to redistribute residual receipts from one property to another and it does not reverse the existing policy, which requires residual receipts in “new regulation” properties to revert back to HUD when the rental assistance contract is terminated. NAHMA supports the *goal* of Section 4, but we recommend a more direct, streamlined approach to achieving that goal. To that end, NAHMA concurs with the previous recommendations made by the National Leased Housing Association (NLHA) to strike Section 4 and replace it with language that would direct HUD to review its regulations and agreements concerning residual receipts and reserve for replacements to encourage energy efficiency. Section 4 of the Senate bill adopts the NLHA proposal and requires HUD to also revise its policy to encourage the use of reserve for replacement funds for energy efficient items.

Section 6 of both bills would require all HUD subsidized multifamily properties, regardless of their participation in the green retrofit programs, to report regularly to HUD regarding project consumption of electricity, water, gas, and other utilities for a larger annual report. NAHMA opposes this section. We do not believe the energy efficiency improvement in the federally-subsidized portfolio should come at the cost of unfunded and burdensome administrative reporting requirements on the owners and agents of affordable properties.

The legislation has been referred to the House Financial Services Committee and Senate Banking Committee, respectively. Due to concerns the NAHMA membership has raised over reporting requirements and the House bill’s language on the use of residual receipts, NAHMA opposes these bills.

The “green dividend” and the Senate residual receipts language have been added as an amendment to H.R. 2336, the GREEN Act. H.R. 4099’s reporting requirements that would have applied to all multifamily properties were not included.

New

H.R. 4106: Green Affordable Housing Act

Sponsor: Rep. Jim Himes (D-CT)

NAHMA Position: Support with reservations

The legislation would authorize HUD to create a program to make grants and loans to owners of eligible federally assisted housing projects for making eligible green retrofit improvements to their properties as long as those owners agree to an affordability extension, as determined by HUD, for the building. Participation in the program would be voluntary.

However, there are several requirements attached to the loans and grants besides the affordability extension. Owners must submit detailed written plans regarding the retrofits to HUD for approval. The plans must include current utility costs and a description of the retrofits to be undertaken. The plan must also lay out a schedule of execution, costs and sources of funding for each improvement, and anticipated cost savings after the retrofit. Finally, the owner of the retrofitted property would be required to report information associated with the actual cost savings of the improvement to HUD on "a regular basis" over the term of cost-savings, as identified within the retrofit plan originally submitted to HUD. Participating owners would also be required to provide any additional information to HUD on the retrofits that they deem necessary.

NAHMA has been working with Representative Jim Himes's office to make the reporting requirements less burdensome. Rep. Himes plans to introduce the modified version of H.R. 4106 as an amendment to H.R. 4868, the preservation bill, during its mark-up in the near future.

New

H.R. 4868: Housing Preservation and Tenant Protection Act

Sponsor: Rep. Barney Frank (D-MA)

NAHMA Position: Oppose

The legislation contains provisions that are intended to:

- Help preserve federally financed and state-financed affordable housing at risk of conversion to market-rate housing;
- Restore housing at risk of loss due to deterioration;
- Protect residents of affordable housing;
- Preserve troubled projects facing foreclosure;
- Maintain housing affordability;
- Create an affordable housing database; and
- Reform the section 202 and rural housing programs.

However, the legislation includes five sections that we believe will drive away equity investment, infringe on owners' property rights, inappropriately inject HUD into landlord-tenant law, and require HUD to release owners' personal and proprietary information. Therefore, NAHMA will oppose the legislation until all five of these provisions are removed.

We specifically oppose:

- Section 107, the federal right of first refusal;
- Section 108, providing a vague blanket exemption of state and local preservation laws from federal pre-emption;
- Section 302, which allows HUD to withhold assistance and tenants to withhold their rent contributions when violations of housing standards or program requirements arise;
- Section 303, which allows residents to enforce housing agreements with HUD through lawsuits; and
- Section 304, which allows residents to access owners' and managers' private and confidential proprietary information on building documents and other required reports.

Nonetheless, NAHMA continues to support the 60 other sections of the bill, including:

- Section 406, which requires HUD to pay an interest penalty on late HAP payments;
- Section 501, extending the Mark-to-Market Program;
- Section 508, providing budget-based rent adjustments and allowing a second restructuring on early M2M properties;
- Section 512, increasing the Mark-to-Market cap on exemption rents;
- Title VII, the Section 202 Supportive Housing for the Elderly Act;
- Section 801, 802, and 803 of Title VIII, providing for rural housing preservation; and

- Other provisions which will help preserve affordable housing.

George Caruso, the Executive Vice President of Edgewood Management, testified on behalf of NAHMA about our opposition to the legislation before the House Financial Services Housing and Community Opportunity Subcommittee on March 24, 2010. NAHMA has been discussing our opposition to the bill in a number of meetings with House Financial Services Committee members' staff. The legislation is expected to be marked up in the coming weeks. NAHMA will continue to work with Committee members' staff to remove the offending provisions from the legislation.

New

H.R. 5361: Responsible GSE Affordable Housing Investment Act of 2010

Sponsor: Rep. Carolyn Maloney (D-NY)

NAHMA Position: n/a

The legislation would ensure multifamily mortgages purchased by Fannie Mae and Freddie Mac would help the GSEs meet their special affordable housing goals, i.e. increasing and/or preserving the number of low-income housing units available to Americans.

NAHMA is currently running this bill through its public policy process. The legislation has been referred to the House Financial Services Committee.

Update

S.118: Section 202 Supportive Housing for the Elderly Act of 2009

Sponsor: Sen. Herb Kohl (D-WI)

NAHMA Position: Support

This legislation simplifies development and facilitates preservation of affordable, supportive, senior housing. It allows Section 202 properties to pre-pay their debt and use excess proceeds to further the non-profits' housing and services mission. The properties may also use residual receipts and requires HUD to provide project-based rental assistance for the project under a senior preservation rental assistance contract in the case of refinancing, rehabilitation, and other preservation efforts. HUD would be required to create a mortgage sale demonstration program for Section 202 properties. The legislation also authorizes the creation of a National Senior Housing Clearinghouse that would serve as a national repository to receive, collect, process, assemble, and disseminate information regarding the availability and quality of multifamily developments for elderly tenants.

In the 111th Congress, the legislation has been introduced in the Senate and has been referred to the Banking Committee. **This legislation has also been included as Title VII of H.R. 4868.**

S. 1658, H.R. 3793: Healthy Housing Council Act of 2009

Sponsor: Senator Jack Reed (D-RI) and Rep. Robert Brady (D-PA)

NAHMA Position: Neutral

This bill would establish an interagency council on Healthy Homes. Members would include the heads of Health and Human Services, HUD, the Environmental Protection Agency, Energy, Labor, Veterans Affairs, IRS/Treasury, Agriculture, and Education.

The Council is intended to:

- Promote the supply and demand for healthy housing;
- Coordinate actions to improve access to healthy housing and efficiency between the agencies;
- Identify program deficiencies and best practices; and
- Improve the quality of housing available.

To that end, the Council is required to produce an annual report to Congress and the President detailing their findings.

This bill has been referred to the Senate Banking Committee and the House Financial Services Committee. NAHMA has decided to remain neutral on this legislation due to concerns of the possibilities of unfunded mandates that may result from the Council's recommendations

S. 1676: Affordable Housing Preservation and Revitalization Act of 2009

Sponsor: Sen. Ron Wyden (D-OR)

NAHMA Position: Support, with reservations

This legislation would allow the use of residual receipts from project-based voucher funded properties with expiring contracts to be transferred to nonprofit agencies that commit to preserving the affordable units. Currently, owners are required to hold on to residual receipts. The bill would prevent the loss of units by allowing these residual funds to be used as replacement reserves and to pay for: rehabilitation costs; tenant services; acquisition of the property; and any other costs that have been approved by HUD.

NAHMA supports the concept of flexibility for using residual receipts, as proposed, but the option must be extended to all affordable preservation entities before NAHMA could actively support the bill. The bill has been referred to the Senate Banking Committee.

New

Draft Legislation: Preservation, Enhancement, and Transformation of Rental Assistance Act of 2010 (PETRA)

Sponsor: None

NAHMA Position: Oppose

As part of HUD's proposed Transforming Rental Assistance Initiative in its FY 2011 Budget, they have submitted draft legislation to Congress, the Preservation, Enhancement, and Transformation of Rental Assistance Act of 2010 (PETRA). According to HUD, PETRA would help owners voluntarily convert PHA and privately owned RAP, Rent Supp, and old Mod Rehab properties to a new form of long-term project-based rental assistance, which includes a resident mobility feature. HUD has stated the intentions of the bill include helping the properties sustain operations and leverage private financing to address immediate and long-term capital needs and implementing energy-efficiency improvements. Likewise, HUD has stated that PETRA is also intended to provide a way to being consolidating its 13 different rental assistance programs.

The act authorizes TRA, giving HUD the authority to streamline policies and procedures across all of its rental assistance programs and convert rental assistance programs. Policies for streamlining include:

- Resident choice
 - With the right to move with a housing choice voucher (which would be available through regular voucher turn-over) after 2 years of residence in a project-based or converted property;
- Tenant organization rights
 - Where PHAs and private owners must recognize legitimate tenant organizations and give consideration to the concerns they raise; and
 - A portion of rental assistance renewal funding would be given to tenants to help facilitate tenant organization.
- Applicant and tenant procedural rights;
 - Where tenants may request a review of property decisions regarding ineligibility, conditions of continued eligibility, and eviction/termination of assistance; and
 - The costs associated with the tenant review would be considered operating costs of the property.
- Furthering fair housing;
- Administering rental assistance;
- Physical condition standards;
- Properties in foreclosure or bankruptcy; and
- Enforcement procedures.

Section 3 also authorizes appropriations to voluntarily convert PHA and privately owned RAP, Rent Supp, and old Mod Rehab properties to long-term project-based rental housing assistant contracts or, in limited situations, to project-based voucher rental assistance contracts. HUD would have the authority to expand the voluntary conversion program to other Federal affordable housing programs through notice under this section. All converted properties would be required to extend their affordability restrictions.

The legislation includes a first right of purchase for HUD. Properties who convert their contracts under this legislation would be required to offer their building for purchase to HUD or its assignee at the end of the contract if the owner decides not to renew its contract with HUD or decides to sell the property. However, the federal option to purchase would not apply to properties converted from one of the project-based Section 8 programs with long-term contracts without mutual agreement. HUD cannot purchase a property if the government is taking it under eminent domain or a negotiated purchase in lieu of eminent domain, the new owner will preserve the affordability of the property, or the assistance is transferred to another property.

NAHMA opposes this legislation as written. We see no efficiency to be gained by future conversions of project-based Section 8 and we believe preserving the orphan multifamily programs could be more easily achieved by converting them to the current project-based Section 8 program. Also, we fear that continued discussions about “converting” HUD’s rental assistance programs will destabilize the lending markets if lenders believe project-based Section 8 is going away.

Tax-Related Housing Bills

H.R. 2887: Affordable Housing Preservation Tax Relief Act of 2009

Sponsor: Rep. Arthur Davis (D-AL)

NAHMA Position: Strongly Support

The bill provides “exit tax” relief to preserve affordable housing. The bills would exclude the gains made from the sale of eligible multifamily housing which is attributed to depreciation from gross income. This exclusion would only become available if a sale of eligible multifamily housing property or an exchange of the property were to be made to an entity who would agree to maintain the affordability for a specified time period.

NAHMA believes exit tax relief is essential to preservation of the affordable portfolio—especially for Section 8 New Construction and Section 8 Loan Management Set Aside properties. We will continue actively working to advance this legislation.

Update

H.R. 2995, S. 1326: The Disaster State Housing Recovery Act of 2009

Sponsors: Senator Evan Bayh (D-IN), Rep. Artur Davis (D-AL)

NAHMA Position: Support

Under H.R. 1, disaster credits were not eligible for the Sec. 1602 LIHTC cash-exchange program. This legislation would make GO Zone and Midwestern Disaster Credits eligible for Treasury’s Section 1602 Tax Credit Exchange Program (cash for credits).

These bills have been referred to the House Ways and Means Committee and Senate Finance Committee. **This legislation was included in the Senate version of H.R. 4213, the Tax Extenders bill. However, this provision was removed during conference on H.R. 4213 and is no longer present in the final version of H.R. 4213.**

H.R. 3641, S. 2827: Military Families Affordable Homes Act

Sponsors: Representative Glenn Nye (D-VA) and Senator Charles Schumer (D-NY)

NAHMA Position: Support

Under the Housing and Economic Recovery Act of 2008, families receiving military housing allowances would be able to exclude those allowances from their overall income in LIHTC properties in counties and adjacent

counties where the military facility Armed Forces members numbered over 1000 and grew by 20 percent between 2006 to 2008.

S. 2827 and H.R. 3641 would simplify by the process for determining eligibility for a military housing allowance exclusion from income in a LIHTC property by removing the size and growth of restrictions on the military facility set by HERA. This will allow the military housing allowance to be exempted from income from LIHTC properties in any county with a military facility or adjacent county in the United States.

The bills have been referred to the Senate Finance Committee and the House Ways and Means Committee, respectively.

Update

H.R. 3929, S. 1761: Extending LIHTC Placed-In-Service Dates for Disaster Areas

Sponsor: Rep. Charlie Melancon (D-LA), Senator Mary Landrieu (D-LA)

NAHMA Position: Support

H.R. 3929 would provide an extension of the LIHTC placed-in-service date requirement for the Gulf Opportunity Zone, the Rita GO Zone, and the Wilma GO Zone from January 1, 2001 to January 1, 2013.

The bills have been referred to the House Ways and Means Committee and the Senate Finance Committee, respectively. A one year GO Zone extension has also been included as a provision of H.R. 4213: The Tax Extenders Act of 2009, which has passed the House and the Senate. **The final conference version of the bill also includes this extension. The final conference version of H.R. 4213 passed the House and was under consideration by the Senate at press time.**

Update

H.R. 4109, S. 3141: Low-Income Housing Tax Credit Act of 2009

Sponsor: Rep. Bill Pascrell (D-NJ), Senator Jeff Bingaman (D-NM)

NAHMA Position: Strongly Support

The legislation would amend the Internal Revenue Code to allow the low-income housing credit to be carried back 5 years. The legislation is the A.C.T.I.O.N carry-back proposal that NAHMA strongly supports. A.C.T.I.O.N. (A Call To Invest in Our Neighborhoods), is a group working to ensure that families have access to affordable housing.

The bill would require investors to reinvest the entire amount of unused housing tax credits carried-back immediately into new LIHTC investments. It would also make the LIHTC for new housing more competitive with other tax credits with shorter compliance and holding periods, by permitting future credits to be carried back up to five years throughout the 10-year credit period. Both provisions would apply to existing and new investments. The bills have been referred to the House Ways and Means Committee and the Senate Finance Committee respectively.

NAHMA will continue to work with the A.C.T.I.O.N. campaign to include this and other important LIHTC proposals on the first available legislative vehicle.

Update

H.R. 4213: American Jobs and Closing Tax Loopholes Act

Sponsor: Rep. Charles Rangel (D-NY)

NAHMA Position: Support the LIHTC cash-exchange extension, GO Zone placed-in-service extension, and funding for the Housing Trust Fund. Oppose the "carried interest" provision.

The House and the Senate have resolved their differences between each of their tax extenders bills. This conference legislation is intended to provide needed tax cuts and support for American workers through the end of 2010. The legislation includes:

- The extension of the 9 percent LIHTC cash exchange program to 2010 housing credits;

- An extension of the GO Zone LIHTC placed in services date through December 31, 2012 (does not include the disaster credit eligibility for the cash-exchange program);
- \$1 billion for the Housing Trust Fund;
- \$65 million in project-based vouchers to be used in conjunction with grants from the Housing Trust Fund; and
- A modified version of the “carried interest” provision.

The “carried interest” provision has been modified from the original proposal in the House’s version of H.R. 4213, the Tax Extenders Act, passed last December. “Carried interest” refers to the general partner’s share of residual profit when a property is sold. The provision will not tax all carried interest as regular income, which was the case under the initial House legislation. Rather, if the carried interest reflects a return on invested capital, it will continue to be taxed at the capital gains rate, 15 percent tax rate. However, if the carried interest does not reflect a return on invested capital, 75 percent of carried interest will be taxed at ordinary income, a 35 percent tax rate. The remaining 25 percent will still be taxed as capital gains. The legislation also includes a transitional period, where only 50 percent of the carried interest will be taxed as ordinary income until January 1, 2013. NAHMA feels that the tax increase, while not as severe as originally proposed, will still impede the financing of future multifamily developments and undermine the underwriting of established deals, resulting in job loss, decreased economic benefits from future housing development, and reduced property tax revenues for state and local governments.

The final conference version of H.R. 4213 passed the House and was under consideration by the Senate at press time.

New

H.R. 4687: Low Income Housing Tax Credit Exchange Expansion and Job Creation Act of 2010

Sponsor: Rep. Linda Sanchez (D-CA)

NAHMA Position: Support

The legislation would extend the LIHTC cash-exchange program for 2010 9 percent tax credits (Section 1602 from ARRA) and expand the program to include 4 percent LIHTCs.

The bill has been referred to the House Ways and Means Committee.

New

H.R. 4849: Small Business and Infrastructure Jobs Tax Act of 2010

Sponsor: Rep. Sander Levin (D-MI)

NAHMA Position: Support extension of 4 percent LIHTCs to cash-exchange program

The legislation would provide tax incentives for small business job creation, extend the Build America Bonds program, and provide other infrastructure job creation tax incentives.

Section 204 of the legislation includes a provision authorizing the inclusion of 4 percent tax credits in the TCAP and cash exchange programs of the American Recovery and Reinvestment Act. This provision is included in the number of LIHTC improvement proposals by the A.C.T.I.O.N. coalition that NAHMA supports. The legislation does not include the five-year carry back or the extension of the cash-exchange program to 2010 9 percent housing credits, which are being considered in H.R. 4109, the Low-Income Housing Credit 5 Year Carry-Back, and H.R. 4213, the Tax Extenders Act, respectively.

The legislation has passed the House and has been referred to the Senate Finance Committee.

S. 1637: Expanding Building Efficiency Incentives Act of 2009

Sponsor: Senator Olympia Snowe (R-ME)

NAHMA Position: Support

As part of the 2005 Energy Policy Act, Congress created the New Energy Efficient Home Tax Credit (Section 45L) to provide incentives to improve energy efficiency in commercial building and single-family homes. However, this legislation did not include provisions to assist low-income renters and multifamily property owners improve energy efficiency in the individual units.

S. 1637 would extend the existing new energy efficient home tax credit (section 45L) and allow it to be used more effectively with affordable multifamily housing. The legislation would extend the Sec. 45L tax credit through 2013 and make it easier to use the credit with the Sec. 42 LIHTC. LIHTC assistance would not be reduced when properties also use the new energy efficient home tax credit. The bill would also provide a higher unit tax credit (\$5000 per unit) for properties that meet the Department of Energy's (DOE) "Builder's Challenge" standard, a 50 percent reduction in all energy costs (heating, cooling, and electric). LIHTC properties would also receive a 50 percent bonus over the current tax credit (\$2000 for a 50 percent reduction in heating and cooling costs) and the proposed higher DOE standard discussed above. Owners would be able to claim the credit the year the building was placed in service and follow the Sec. 45L verification requirements already in place.

The legislation would lower the costs of utilities for low-income residents, provide stable operating reserves for building maintenance, improve building performance, reduce operating costs, and lower carbon emissions.

The cosponsors of the legislation plan to urge the Senate leadership to include it in whatever comprehensive energy and climate or green jobs legislation that is advanced in the Senate. The legislation has been referred to the Senate Finance Committee.

New

S. 3326: Job Creation and Affordable Housing Act of 2010

Sponsor: Senator Maria Cantwell (D-WA)

NAHMA Position: Support

The bill would provide a 5-year carry-back for LIHTCs. The 5-year carry-back for LIHTC would apply existing 2008 and 2009 LIHTCs and to new investments using 2010 and 2011 LIHTCs. The legislation also provides grants in lieu of 4 percent credits for 2010, similar to the American Recovery and Reinvestment Act's Section 1602 LIHTC cash-exchange program for 9 percent credits. The bill also allows the 4 percent credits that have been exchanged for grants to be used with existing 9 percent LIHTCs. Finally, the act would allow LIHTCs to offset up to 100 percent of federal tax liability.

This legislation has been referred to the Senate Finance Committee.

Management

Update

H.R. 476- Fair Housing Fairness Act

Sponsor: Rep. Al Green (D-TX)

NAHMA Position: n/a

The legislation authorizes \$52 million in annual funding for HUD's Fair Housing Initiatives Program (FHIP), which was funded at \$42.5 million for FY 2010. It would also authorize \$20 million for each of the next five years to allow HUD to test for discrimination in home buying, renting, or financing. NAHMA is concerned the level of testing recommended in the legislation is excessive. We feel that the discrimination testing measures already in place at HUD are more than adequate.

The House Financial Services Committee held a hearing in January to discuss this bill. **The House Financial Services Housing and Community Opportunity Subcommittee has passed the legislation. It now awaits consideration by the full Committee.**

H.R. 3045 - Section 8 Voucher Reform Act of 2009**Sponsor: Rep. Maxine Waters (D-CA)****NAHMA Position: Strongly Support**

H.R. 3045 is a bipartisan bill that makes important improvements to the Section 8 voucher program and is expected to be the legislative vehicle to carry the LEP compromise language.

There are several key aspects of this bill which stabilize funding for the program by basing funding for vouchers on the previous year's leasing and cost data; simplify the complicated set of rules for the determination of rent, recertification of income and inspection of housing units, while maintaining current affordable standards; authorize appropriations for new incremental vouchers; simplify administration for PHAs; include tools to encourage voucher families to move to economic self-sufficiency such as disregarding a portion of earned income to protect families from any resultant increases in rent; and base voucher eligibility on income and assets.

However, the section that authorized Limited English Proficiency (LEP) technical assistance was left out due to "germaneness" concerns. House Financial Services Committee leadership plans to offer a managers' amendment during the House floor vote that will include the LEP provision.

We expect LEP authorization will include: the creation of a task force of industry and civil rights stakeholders to identify vital documents (to include both official HUD forms and unofficial property documents); a requirement that HUD must translate the vital documents (both official HUD forms and property documents) within six months; creation of a HUD-administered 1-800 hotline to assist with oral interpretation needs; and authorization of appropriations.

The House Financial Services Committee passed SEVRA on July 23, 2009. It has yet to be scheduled for a floor vote in the House.

H.R. 3897: Removing Reward for Section 8 Fraud Act of 2009**Sponsor: Rep. Elton Gallegly (R-CA)****NAHMA Position: Strongly Support**

The legislation would amend Section 12 of the United States Housing Act of 1937 to close a loophole that allows Project-Based Section 8 properties to lower rents for families who are repaying the government when welfare fraud has been detected.

Passed in 1998, the Quality Housing and Work Responsibility Act of 1998 was intended to prohibit the owners and operators of the Section 8 programs from lowering the rent for tenants who commit welfare fraud or who refuse to participate in a self sufficiency program. However, the law only specifically identified PHA's as part of the Section 8 program, and was not applied to residents residing in Project-Based Section 8 properties.

The legislation closes the loophole by requiring privately owned Section 8 properties to maintain rent levels for any household whose welfare benefits are reduced because the welfare agency has determined and verified:

- The family has committed welfare fraud; and
- The enforced sanction on the household is a result of noncompliance with a requirement to participate in an economic self-sufficiency program.

The bill has been referred to the House Financial Services Committee. NAHMA has met with Rep. Elton Gallegly's (R-CA) staff to discuss the legislation and has provided a letter of support to their office. While we support the intention of the legislation, we specifically requested additional language that would clarify that owners and agents would not be held responsible for monitoring welfare fraud or self-sufficiency work requirements.

New

H.R. 4766: Permanently Protecting Tenants at Foreclosure Act of 2010

Sponsor: Rep. Keith Ellison (D-MN)

NAHMA Position: Oppose

The bill would permanently extend the Protecting Tenants at Foreclosure Act of 2009. This legislation was included in S. 896 (P.L. 111-22), the Helping Families Save Their Homes Act of 2009, signed into law last May. The current tenant protection requirements expire on December 31, 2012.

The tenant protection provisions of S. 896 allow renters whose landlords have lost their properties to foreclosure the right to stay in the home for 90 days after the foreclosure or through the term of their lease, unless the property is sold to someone who will occupy the home.

The law also provides similar protections to housing voucher holders but requires purchasers of foreclosed buildings who receive Section 8 HAPs to honor the existing lease unless they plan to live in the building. If the new owners plan to use the building as primary residence, they must give 90 days notice to the tenant.

NAHMA opposed the temporary provision last year in S. 896. We continue to oppose this proposal. The legislation has been referred to the House Financial Services Committee.

Budget and Appropriations

NAHMA generally does not list a public policy position on appropriations bills, but we do actively work to achieve the highest possible funding levels for multifamily housing programs.

Please note that at press time the FY 2011 Appropriations bills have not been written yet, not has a FY 2011 budget resolution been passed by either the House or the Senate

P.L. 111-68 (H.R. 2918): FY 2010 Legislative Branch Appropriations and FY 2010 Continuing Resolution

Sponsor: Rep. Debbie Wasserman Schultz (D-FL)

The H.R. 2918 funds Legislative Branch activities for FY 2010. It also contained the FY 2010 Continuing Resolution (CR), which gave Congress additional time to complete the other FY 2010 appropriations bills, which included both FY 2010 Agriculture and Transportation-HUD (THUD) bills. The legislation funded all government programs at FY 2009 levels unless otherwise specified in the CR. Section 149 of the CR directed HUD to obligate funds to renew or amend, in a timely manner, all Project-Based Section 8, Section 202, and Section 811 rental assistance contracts. It also allowed payments to be made beyond the October 31, 2009 end date. Under the CR, HOPE VI has been extended until October 31, 2009.

The CR lasted through October 31, 2009. It was followed by a second CR, which extended all provisions of the first CR until December 18, 2009, contained in H.R. 2996, the FY 2010 Interior-Environment Appropriations Act. President Obama signed the legislation into law on October 1, 2009 as P.L. 111-68.

P.L. 111-80 (H.R. 2997): Agriculture, Rural Development, Food and Drug Administration Appropriations Act of 2010

Sponsor: Rep. Rosa DeLauro (D-CT), Sen. Herb Kohl (D-WI)

This legislation provides appropriations for Rural Housing Programs for FY 2010. NAHMA was disappointed by the flat-funding and cuts Congress included for some key programs.

H.R. 2997 included:

- \$980 million for rural rental assistance;
- \$45 million for rural housing assistance grants for rehabilitation and repairs;
- \$69.5 million for Section 515 Housing Direct Loans;
- \$129 million for Section 538 Housing Loan Guarantees (interest subsidies not included); and

- \$43.2 million to the Multifamily Housing Revitalization Program (\$16.4 million in vouchers, \$25 million for the demonstration program, and \$2 million for non-profit loans).

President Obama signed this legislation into law as P.L. 111- 80 on October 16, 2009.

P.L. 111-117 (H.R. 3288): Consolidated Appropriations Act of 2010

Sponsor: Rep. John Oliver (D-MA), Sen. Patty Murray (D-WA)

This legislation provides \$450 billion to fund the government programs that fall under the jurisdiction of the Transportation-HUD, Commerce-Justice-Science, Labor-HHS-Education, Veterans, and State/Foreign Operations appropriations bills. NAHMA was pleased with the significant increases over FY 2009 Appropriations included in the legislation.

The HUD funding summary includes:

- Tenant-Based Rental Assistance: \$18.2 billion (total); \$16.339 billion (contract renewals)
- Project-Based Rental Assistance: \$8.5 billion (total); \$8.325 billion (contract renewals); \$393 million as an FY 2011 Advanced Appropriation included in the total funding level
- Limited English Proficiency (LEP) Funding: \$500,000
- Section 202 Housing for the Elderly: \$825 million
- Section 811 Housing for the Disabled: \$300 million
- HOME: \$1.825 billion
- CDBG: \$4.45 billion
- Hope VI: \$200 million; \$65 million for the Choice Neighborhoods demonstration program
- Energy Innovation Fund: \$50 million; \$25 million for an Energy Efficient Mortgage pilot program and \$25 million for a Multifamily Energy Pilot program
- Transformation Initiative: \$20 million to combat mortgage fraud and allows the transfer of up to 1 percent of all program accounts to an account for IT improvements and technical assistance

President Obama signed this legislation into law as P.L. 111-117 on December 16, 2009.