

NAHMAanalysis

NATIONAL AFFORDABLE HOUSING MANAGEMENT ASSOCIATION

Ensuring NAHMA Members Receive the Latest News and Analysis of Breaking Issues in Affordable Housing

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Unfinished Work: Affordable Housing Legislation from the 113th Congress

Background

During the 113th Congress, lawmakers in the Senate and House started work on several initiatives which would impact the management and funding of affordable housing. Some proposed legislation would have benefited the affordable housing industry, while other bills would have had a negative impact. Unfortunately, few initiatives were actually enacted due to partisan gridlock, sequestration, and austere budget caps.

Collected in this NAHMAanalysis is a list of the affordable housing legislation introduced in the 113th Congress, but was ultimately unpassed. NAHMA hopes to see some of this legislation reintroduced in the 114th Congress, and that lawmakers will be able to collaborate to pass them into law.

(Please note that S. plus a bill number denotes a Senate bill while H.R. plus a bill number is a House bill).

Multifamily Housing Legislation

NAHMA advocates for legislation which will positively impact the policies or management of affordable housing. Since 2007, Congress has considered some version of Section 8 or other rental assistance reform legislation. The most recent comprehensive proposal was the Affordable Housing and Self-Sufficiency Improvement Act (AHSSIA) developed by the House Financial Services Committee in 2012. The savings and efficiencies achieved through AHSSIA's proposed reforms would help stretch limited funds and minimize the risk of harsh cuts in assistance to needy families.

Unfortunately, Congress has yet to enact AHSSIA. AHSSIA was not reintroduced in the 113th Congress nor in the 114th. Since AHSSIA was introduced, there have been few legislative proposals to enact reforms to Section 8 and other rental assistance programs. The following bills are from the 113th Congress. Each bill proposed some reform to affordable housing programs.

- **H.R. 5776: The Tenant Income Verification Relief Act of 2014**, introduced by Representatives Ed Perlmutter (D-CO) and Steve Stivers (R-OH) on 12/1/14. This bill would allow tenants on a fixed income to have their income certified and/or verified once every three years rather than annually in order to streamline and reduce the burdens placed on

tenants for purposes of determining their eligibility. NAHMA has supported similar proposals that would reduce the burden of income certifications for property owners, tenants and housing authorities. For example, NAHMA supported provisions in the AHSSIA which would have similarly reduced income certification to once every three years. Most recently, NAHMA explored reducing or eliminating income-driven interim recertifications as part of our Alternative Futures Working Group policy proposals. This policy proposal examined the cost savings provided by eliminating interims for mid-year increases in income or for income increases at various thresholds. **Status:** Representative Perlmutter reintroduced this bill for the 114th Congress as H.R. 233 on 1/8/15. H.R. 233 passed the House of Representatives on 3/24/15 by a voice vote and has now been referred to the Senate Banking, Housing and Urban Affairs Committee. NAHMA continues to support this legislation and we hope to see it enacted in the 114th Congress.

Tax Reform and the LIHTC

During the 113th Congress, lawmakers sitting on the House Ways and Means Committee and its Senate counterpart, the Finance Committee, were actively pursuing legislation that would overhaul the U.S. Tax Code, and ultimately, the Low-Income Housing Tax Credit (LIHTC). However, then Democratic leadership in the Senate and Republicans in the House were split as to how reform would progress and which specific tax policies would be retained. Numerous bills and proposals were submitted, but little was accomplished outside of an extension of tax breaks for 2014. Below are the various bills and proposals that were introduced but were not passed; NAHMA hopes to see reintroduction for some of these items.

- **S.1442: Improving the Low Income Housing Tax Credit Rate Act**, introduced by Senator Maria Cantwell (D-WA) on August 1, 2013. This bill would make permanent the 9 percent minimum rate for new housing projects and permanently establish a 4 percent minimum rate for acquiring existing housing for rehabilitation. The 9 percent floor expired after 12/31/13 but was extended for 2014 through the Tax Increase Prevention Act of 2014 (H.R. 5771/P.L. 113-295). Overall, this bill will strengthen the public-private relationship fostered by the low income housing tax credit. **Status:** As of publication of this NAHMA analysis, Senator Cantwell has not reintroduced this legislation in the Senate.
- **H.R. 4717: To Make Permanent and Expand the Temporary Minimum Credit Rate for the Low-Income Housing Tax Credit Program** (working title), introduced by Representatives Pat Tiberi (R-OH) and Richard Neal (D-MA) on May 23, 2014. H.R. 4717 is a House counterpart bill to S.1442; it would similarly amend the Internal Revenue Code to make permanent the minimum 9 percent credit rate and permanently establish the minimum 4 percent credit rate in the LIHTC program. **Status:** Representatives Tiberi and Neal have reintroduced this bill as H.R. 1142. As of 4/21/15, H.R. 1142 has 52 cosponsors. NAHMA supports this bill and has advocated for other House representatives to join as cosponsors. This bill would eliminate the financial risk of a possible floating rate system, simplify state administration, and create stability for owners and investors of Housing Credit developments.
- **S. 2260: the Expiring Provisions Improvement Reform and Efficiency (EXPIRE) Act**, introduced by Senator Ron Wyden (D-OR) on April 3, 2014. This was a “tax extenders” bill, a piece of legislation intended to continue current and temporary tax breaks in lieu of comprehensive reform legislation. Under the EXPIRE Act, more than 50 temporary tax breaks that expired at the end of 2013 would have been extended through 2015, including

the LIHTC 9 percent minimum credit rate and 4 percent credit rate for preservation. Despite initial support from both parties, procedural votes to move the bill towards cloture came to 53 to 40, which did not meet the threshold to bypass a filibuster.

- **S.2723: Housing for Homeless Students Act of 2014**, Introduced by Senators Al Franken (D-MN) and Rob Portman (R-OH) on 7/31/14. This bill would qualify homeless youth and veterans who are full-time students for purposes of the low income housing tax credit (LIHTC). To accomplish this, the Housing for Homeless Students Act will exempt certain individuals from the LIHTC student occupancy rule if they have experienced homelessness at any point in the five years prior to moving into a LIHTC property. This exemption will include homeless individuals covered by the definition of “homeless children and youth” in the McKinney-Vento Homeless Assistance Act. The bill also includes an explicit exemption from the student rule for homeless veterans seeking an education. It was previously submitted by Senator Franken in 2012. **Status:** The Housing for Homeless Students Act has yet to be reintroduced in the 114th Congress. NAHMA sent a letter supporting S.2723 to Senator Franken on 4/18/14.
- **Draft Legislation: Tax Reform Act of 2014**, released by the House Ways and Means Committee Chairman David Camp (R-MI) on 2/26/14. The Tax Reform Act of 2014 sought to make significant overhauls to the U.S. tax code, including the LIHTC. Representative Camp’s proposed reforms to the LIHTC included: changing the allocation method from a credit amount to a qualified basis amount equal to \$31.20 multiplied by the state’s population; extending the credit period from 10 to 15 years; interest on newly issued PABs would be taxable; no Federal tax credits would be allowed for mortgage credit certificates issued after 2014; and eliminating the current recapture rules. The most alarming proposal in this draft bill was the elimination of the 4 percent credit (also known as the 30 percent present value credit). The 9 percent credit would be retained, but with major changes: federally funded grants would not be taken into account when determining the eligible basis of a building for purposes of the credit; the increased 130 point basis rule for high-cost and difficult development areas would be repealed; occupancy preferences would be permitted only for individuals with special needs and for veterans; and repeal of the requirement that states include energy efficiency and historic nature selection criteria for low-income housing. NAHMA strongly opposed the elimination of the 4 percent credit. **Status:** the Tax Reform Act was introduced as a draft, and was never formally submitted as a bill. Representative Camp has yet to reintroduce it in the 114th Congress. It is unlikely that his proposal would be enacted in its current form; Camp is no longer the chairman of the Ways and Means Committee, and the current chair, Representative Paul Ryan (R-WI), referred to the proposal as one of many ideas currently being considered.

At the end of the 113th Congress, lawmakers passed the Tax Increase Prevention Act of 2014, a bill which retroactively extended the 9 percent minimum credit rate and other tax provisions until the end of 2014 for tax filing purposes; the Tax Increase Prevention Act did not include the 4 percent minimum credit rate. Congress will need to address this issue again later this year as all tax provisions are now considered expired for tax filing purposes.

Congress seems set on reforming the U.S. Tax Code in the 114th Congress. Recently, the Senate Finance Committee (now chaired by Senator Orrin Hatch (R-UT)) released information on how it will make progress on reform. The Committee will launch five separate bipartisan Finance Committee Tax Working Groups. “The groups will analyze current tax law and examine policy trade-offs and available reform options within the group’s designated topic areas. Each group will be co-chaired by one Republican and one Democrat member,” a press release issued

on January 15, 2015 said. The working groups include: 1) Individual Income Tax; 2) Business Income Tax; 3) Savings & Investment; 4) International Tax; and 5) Community Development & Infrastructure.

On 4/9/15, NAHMA submitted recommendations to the Community Development & Infrastructure working group which reiterated our support of permanently establishing the 9 and 4 percent minimum credit rates. NAHMA's recommendations also urged the Senate Finance Committee to examine ways to make the student occupancy rule for LIHTC properties more cohesive with other federal programs and remove the conflicting occupancy rules for full-time students that exist between HUD and the Treasury Department.

Housing Finance Reform

A complete overhaul of the housing finance market was a major objective of the House Financial Services Committee and the Senate Banking, Housing and Urban Affairs Committee. Several proposals were introduced in the 113th Congress, but none were enacted. Still, many lawmakers are eager to reduce the federal government's footprint in the market, close the government-sponsored enterprises (GSEs) Fannie Mae and Freddie Mac, and eliminate the risk presented to taxpayers under the current system. Below are the bills and proposed items that were introduced to tackle this issue.

- **H.R. 2767: The Protecting American Taxpayers and Homeowners (PATH) Act.** Introduced by Representative Scott Garrett (R-NJ) in July of 2013, the PATH Act was considered the leading housing finance reform bill in the House of Representatives in the 113th Congress. It proposed numerous reforms to the Federal Housing Administration (FHA) and would have significantly reduced the size of the agency's size. Under this act, the FHA would spin off from HUD to become its own free-standing agency with full self-sufficiency requirements in its operations. The minimizing of the FHA would require the agency to raise guarantee fees, engage in risk-sharing with private investors, and steadily reduce the size of retained portfolios. Federal policy would also coordinate the operations of the FHA and the Rural Housing Service so that the two agencies would share technology and risk management. Furthermore, the PATH Act sought to eliminate the GSEs and repeal their mandatory affordable housing goals and the GSE-funded Housing Trust Fund. **Status:** The House Financial Services Committee passed the PATH Act, but it was not placed on the House floor for votes. At this time, Representative Garrett has not reintroduced this legislation in the 114th Congress.
- **H.R. 5495: The Preserving Multifamily Housing Act of 2014,** introduced by Representative Carolyn Maloney (D-NY) on 9/16/14. This bill would prohibit the Federal Housing Finance Agency (FHFA) or other regulators from setting arbitrary limitations on the volume or scope of multifamily housing mortgages backed by the GSEs. Exceptions are made when the Director of the FHFA determines that there is substantial evidence that not placing limits on the multifamily businesses would compromise the financial safety and soundness of the GSEs. However, the Director would have to notify Congress and the public in advance. **Status:** by the end of the 113th Congress, there were no cosponsors of H.R. 5495, and Representative Maloney has yet to reintroduce the bill in the 114th Congress. NAHMA supported this legislation, and we would like to see it reintroduced.
- **H.R. 5055: The Partnership to Strengthen Homeownership Act,** introduced by Representative John Delaney (D-MD) on 7/10/14. This housing finance reform bill aimed to substantially reduce the federal government's role in the housing finance market and eliminate the GSEs. The bill establishes an insurance program through Ginnie Mae (a

wholly owned government corporation within HUD) whereby it makes available the full faith and credit of the United States, while using private sector capital and accurate pricing of government reinsurance. The GSEs may be sold and recapitalized as entities with different business plans without any of their current unique powers. For affordable housing, the GSEs' multifamily business will be spun out as separate entities. Ginnie Mae will be required to create and implement a workable multifamily guarantee that utilizes private sector pricing consistent with the single family model. The current multifamily businesses of Fannie and Freddie will continue to function within the new multifamily housing market as purely private organizations with an explicit government guarantee provided by Ginnie Mae and a private sector reinsurer. **Status:** On 3/19/15, Representative Delaney reintroduced this bill as H.R. 1491. So far, H.R. 1491 has gained 10 cosponsors and has been referred to the House Financial Services Committee. However, NAHMA does not anticipate this bill will advance past the committee level and reach the House floor for final vote. Typically, bills introduced by the minority party do not gain much traction.

- **S.1217: The Housing Finance Reform and Taxpayer Protection Act of 2013**, introduced by Senators Bob Corker (R-TN) and Mark Warner (D-VA) on 6/25/13. As originally introduced, this bill sought to close the GSEs and replace them with a new federal company called the Federal Mortgage Insurance Company (FMIC), which would be designed to provide catastrophic reinsurance for mortgage-backed securities. S. 1217 would also abolish the Federal Housing Finance Agency (FHFA) and transfer its staff, infrastructure, technology and other resources to the newly created FMIC. Later in the 113th Congress, this bill was amended by then Senate Banking, Housing & Urban Affairs Committee Chairman Tim Johnson (D-SD) and Ranking Member Mike Crapo (R-ID) on 3/16/14. The amended version of the bill would have eliminated the GSEs' affordable housing goals and replaced them with "transparent and accountable housing-related funds that would focus on ensuring there is sufficient decent housing available." An initial and incentive-based fee collected through a FMIC user fee (10 basis points) structure would be used to support the Housing Trust Fund, the Capital Magnet Fund, and the new Market Access Fund for affordable housing development. **Status:** S. 1217 was formally the leading housing finance reform bill in the Senate and the subject of numerous hearings. On 5/15/14, the Senate Banking, Housing, and Urban Affairs Committee passed an amended version of S.1217 with a recorded vote of 13-9. On 9/18/14, S.1217 was placed on the Senate legislative calendar for consideration by the entire chamber. Progress stopped there as lawmakers started gearing up for the 2014 elections. This bill is unlikely to be reintroduced in the 114th Congress. Senator Tim Johnson retired at the end of the 113th Congress and the Banking, Housing & Urban Affairs Committee is now chaired by Senator Richard Shelby (R-AL) with Sherrod Brown (D-OH) serving as ranking member. They have primarily focused on regulatory requirements for banks, and their approach to housing finance reform has not been released.
- **Draft Legislation: Housing Opportunities Move the Economy (HOME) Forward Act of 2014**, released by Representative Maxine Waters (D-CA), the Ranking Member of the House Finance Committee on 3/27/14. The HOME Forward Act would also eliminate the GSEs and replace them with a "more flexible" approach that places more credit risk in the markets rather than the federal government. It would establish the National Mortgage Finance Administration with the purpose of ensuring access to affordable mortgage credit, including 30-year fixed mortgages, and protecting taxpayers for absorbing losses incurred in the secondary markets in periods of economic stress. Under this Administration, a new lender-owned Mortgage Securities Cooperative would be created that will be the single issuer of government-guaranteed securities and will be governed on a "one-member, one-

vote basis". The Act creates an explicit government guarantee, which would be paid for by the housing finance industry and used to capitalize a catastrophic insurance fund. Although the bill seeks to maintain the GSEs' multifamily business, it would repeal its mandatory affordable housing goals. According to a summary of the draft bill, the repeal of this requirement is offset by a "broad duty [on behalf of lenders] to serve the entire market, including underserved urban and rural markets." **Status:** Representative Waters did not formally introduce the HOME Forward Act in the 113th Congress, and so far she has not pursued the legislation in the 114th. Similar to Delaney's H.R. 5055, bills introduced by the minority party do not gain much traction.

Conclusion

We anticipate that the 114th Congress will experience some of the same partisan gridlock which delayed or prevented passage of crucial housing legislation. However, we are encouraged that there is some bipartisan cooperation on some issues such as Representative Tiberi's attempts to make permanent the 9 and 4 percent minimum credit rates in the LIHTC. NAHMA will continue working to advance housing legislation we support.

In addition, we will initiate advocacy campaigns against legislation which would negatively impact the managers and owners of affordable housing properties and the tenants they house. In the coming weeks, we expect that the 114th Congress will work on the appropriations legislation for FY 2016 and other critical items in other federal agencies. NAHMA will continue to alert members of impending legislation critical to affordable housing, and how you can advocate to your elected officials.