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UPDATED- H.R. 3221: The Housing and Economic Recovery Act of 2008

Status: Signed into law as P.L. 110-289 on July 30, 2008

Background

H.R. 3221 has gone through various incarnations over the last four months. Passed by the Senate on April 10, 2008, the initial foreclosure prevention plan was a response to the ongoing crisis in the housing market. At the time, there were several noteworthy provisions in terms of affordable housing assistance such as \$4 billion in CDBG grants, but it was the House that chose to expand on them. The Administration issued a policy statement threatening to veto the act over the inclusion of additional CDBG funding and various other measures.

The House version of H.R. 3221 passed on May 8, 2008 included comprehensive low-income housing tax credit modernization from H.R. 5720, the Housing Assistance Tax Act. It also included significant GSE reform and FHA modernization and finance legislation.

The second Senate version, passed on July 8, 2008, tweaked much of the LIHTC modernization, GSE reform, and FHA modernization language and included an affordable housing trust fund. In the midst of the omnibus passage, Freddie Mac and Fannie Mae stock shares plummeted over concerns that the GSEs are undercapitalized. The Administration and the Treasury stepped in, calling for an increase in credit to help stabilize the two.

The House amended and passed the housing stimulus by a vote of 272 to 152 on July 23, 2008. The current House version of the legislation includes a Treasury proposal, as well as several key LIHTC streamlining provisions that were left out of the Senate bill.

After much debate, the bill was overwhelmingly approved by a 72 to 13 vote in the Senate. The President signed the legislation into law on July 30, 2008 as P.L. 110-289.

Legislation

The most important House amendments to the second Senate version of H.R. 3221 include a Treasury plan to provide a line of credit and purchase stock in Fannie and Freddie—whose shares have plunged over concerns that they are undercapitalized—and the addition of several provisions from the “Housing Tax Credit Coordination Act of 2008”—previously included in the first version of the House’s housing omnibus passed in May.

The revised bill would allow Treasury to provide a line of credit to the GSEs above their current limit of \$2.25 billion, give Treasury the authority to purchase equity in the two, and allows the Federal Reserve to consult a new GSE regulator, created in this legislation, on setting capital standards for Fannie and Freddie. To accommodate the rescue, the bill raises the national debt limit to \$10.6 trillion, an increase of \$800 billion.

The industry has worked very closely with the House Financial Services Staff to develop the “Housing Tax Credit Coordination Act”, a component of H.R. 5720 left out of the July 8, 2008 Senate bill. Some of the most significant additions from the act include:

- Giving HUD authority to implement administrative and procedural changes to expedite approval of multifamily housing projects;
- Simplifying the approval process for projects financed through USDA and HUD;
- Streamlining FHA multifamily insurance processing for Housing Credit transactions;
- Creating of a pilot program to demonstrate the effectiveness of the streamlining process;
- Changing Project Based Section 8 contract terms from 10 to 15 years;
- Establishing reasonable rent at levels equal or less than comparable units receiving tax credits or non-tenant based federal assistance; and
- Allowing qualified and willing HFAs to underwrite Section 202 transactions.

These provisions, originally included in the May 8, 2008 House legislation, were removed from the Senate version over concerns that they were not “germane” or directly related to the housing stimulus.

The House-passed bill retains the Housing Credit modernization provisions the Senate bill contained, including:

- Increasing the State Housing Credit Ceiling for 2008 and 2009 by \$0.20 to \$2.20 per capita;
- Temporarily increasing the minimum credit rate to 9 percent of the qualified basis for a new building;
- Eliminating below-market federal loans from the definition of federally subsidized properties, therefore allowing the 9 percent credit on all federally subsidized properties, except for tax-exempt bond financed properties;
- Eliminating the prohibition on the 30 percent basis boost for HOME-assisted properties in qualified census tracts or difficult development areas;
- Temporarily increasing the amount of tax-exempt mortgage revenue bonds by \$11 billion;
- Permitting an increase from 35 percent to 50 percent in rehabilitation credit for tax-exempt use properties;

- Clarifying that federal grants cannot be taken into account when determining a property's eligible basis;
- Repealing the prohibition on LIHTC eligibility for Section 8 on moderate rehab properties;
- Repealing the recapture bond requirement for the next five years;
- Recycling tax-exempt debt one-time for financing residential rental projects;
- Holding LIHTC and tax exempt housing bond properties harmless for reductions in area median gross income (AMI);
- Repealing the Alternative Minimum Tax (AMT) limitations on tax-exempt housing bonds, LIHTC, and the rehabilitation credit;
- Removing income recertifications in 100% financed LIHTC projects;
- Disregarding military basic pay for housing allowance;
- Requiring a GAO study regarding the modifications to LIHTC; and
- Allowing states to use the greater of area median income or national non-metropolitan income in determining eligible incomes and rents for Housing Credit properties developed in rural areas.

Also of importance, the bill includes an Affordable Housing Trust Fund, which the industry has worked hard on obtaining for several years, and a Capital Magnet Fund.

The trust fund will use income from Fannie's and Freddie's new business and provide about \$500 million annually toward increasing, preserving, and rehabilitating the supply of rental housing and home ownership for low-income families. Grants will be allocated to the states and state-designated entities using a needs-based distribution formula and may be given to both non-profit and for-profit entities. The legislation also establishes a minimum state allocation of \$3 million and requires states and state-designated entity receiving grant funds to establish an allocation plan, which must be reported annually to HUD.

The Capital Magnet Fund is a competitive grant program to attract private capital and increase investment for the development, preservation, rehabilitation, or purchase of affordable housing and economic development activities in conjunction with affordable housing activities intended to stabilize or revitalize a low-income area. Grants from this program will be allocated to Treasury-certified community development institutions and nonprofit organizations.

The legislation still contains provisions from the original House and Senate legislation that would:

- Create an independent regulator for Fannie Mae and Freddie Mac;
- Overhaul the FHA's mortgage insurance program;
- Grant \$4 billion in CDBG grant funds to help states and localities turn around foreclosed properties, geared toward single family housing, but also encompassing low-income family housing;
- Allow the FHA to guarantee up to \$300 billion in new loans for at-risk sub-prime borrowers;
- Provide \$150 million in foreclosure mitigation counseling funding; and

Provisions Not Included

The current House passed legislation has deleted Senate bill language allowing credit developments to establish occupancy restrictions or preferences that favor tenants who share common occupations or interests, replacing that language with specific exclusions from the text for those involved in artistic or literary activities.

Positive Aspects of this Legislation

NAHMA is pleased that the House has wisely included many NAHMA priorities, such as the Housing Tax Credit Coordination Act, a housing trust fund, GSE reform, FHA modernization, and streamlining the LIHTC program. House Financial Service Chairman Barney Frank's staff worked very closely with the multi-family industry representatives to develop many of these provisions. This legislation will help improve GSE and FHA operation and oversight and streamline the use of LIHTC with HUD programs, improving owners and managers' ability to use mixed-financing on their properties.

We are pleased that the President has signed this important legislation into public law and we look forward to HUD's implementation of the new LIHTC measures.

Concerns

HUD has predicted that drafting and implementing the regulations called for in this legislation would take at least one year, drawing criticism from Congressional Democrats. NAHMA feels that this is too long to implement crucial housing credit changes with little or no cost and urges HUD to implement these measures as soon as possible in order to simplify the use of tax credits and mixed-financing for properties.

NAHMA's Position

NAHMA strongly supports H.R. 3221. The legislation provides much needed reform to Freddie Mac and Fannie Mae as well as modernizes the FHA program. It gives additional opportunities to construct and preserve low-income housing units through an affordable housing trust fund. Finally, the legislation streamlines and modernizes the LIHTC program, simplifying many issues associated with mixed-financing of affordable properties.