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February 9, 2009 E-NAHMAnalysis 2009-0209

E-NAHMAnalysis 2009-0209: Update On The Senate Stimulus Legislation

Background

On January 28, the House passed its version of the American Recovery and Reinvestment Act of 2009 (HR 1, or the economic stimulus bill) on a party-line vote of 244-188. Not a single Republican member voted in favor of the bill, and only 11 Democrats voted against it.

Last week, HR 1 encountered similar resistance which threatened to derail the bill in the Senate. Without support from some Republican Senators, it would not have been possible to end debate in the Senate and move to a final vote. Late Friday, reports began circulating that compromise legislation would be introduced by Senators Ben Nelson (D-NE) and Susan Collins (R-ME). Their amendment would be a complete substitute bill which would cut spending by $110 billion. According to a statement by Senator Nelson,

> "This bipartisan agreement delivers the help millions of Americans need in this time of economic turmoil. It fuels two powerful engines: major tax cuts for the middle class, and targeted investments in American infrastructure and job growth. It also pares back $110 billion of spending that didn't belong in the bill. We've trimmed the fat, fried the bacon, and milked the sacred cows. What remains will fund education, an energy Smart Grid, tax credits for homebuyers and other critical infrastructure."

The Nelson-Collins amendment was introduced on Saturday as Senate Amendment 570 to HR 1. A vote to cut off debate on the amendment is scheduled at 5:30 PM this evening. With marginal Republican support, Senate leaders expect to have the 60 votes necessary to end debate. Once the procedural hurdle is cleared, Senate leaders will move quickly toward a vote on final passage of the bill. Pre-conference discussions between House and Senate leaders who must resolve differences between the different versions of HR 1 are reportedly underway.

Summary

The multifamily housing industry fared relatively well under the Nelson-Collins amendment (SA 570 to HR 1). A number of important appropriations that were included in the Senate's previous version of HR 1 were retained. For instance:

- The $2 billion designated for gap financing to address investor equity shortfalls for Low Income Housing Tax Credit (LIHTC) properties was retained (See Division A, Title XII T-HUD Appropriations, Home Investment Partnerships Program heading);
- $2.13 billion necessary to fund 12 month periods in project-based Section 8 contracts was retained; (See Division A, Title XII T-HUD Appropriations, Assisted Housing Stability and Energy and Green Retrofit Investments heading); and
- Funding for grants or loans for energy retrofits and green investments in Project-based Section 8, Section 202 or Section 811 was also included, although at a substantially reduced amount of $118 million. The Senate Appropriations Committee originally provided $1.37 billion. (See Division A, Title XII Transportation-HUD, Assisted Housing Stability and Energy and Green Retrofit Investments heading).

Language to allow acceleration of the LIHTC was also included in SA 570. Similar language was expected to be introduced by Senator Maria Cantwell (D-WA) as a floor amendment prior to the agreement on the Nelson-Collins compromise. This language allows taxpayers to temporarily elect to accelerate the LIHTC by up to 200 percent for the first three taxable years. Fortunately, having the accelerator included in SA 570 virtually ensures it will remain in the final Senate bill. (See Division B, Title I, Subtitle J, Section 1903 Election to Accelerate the Low Income Housing Tax Credit.)

One provision that was removed from the Senate bill in the Nelson-Collins amendment was a section allowing a 5-year carry-back of business credits. However, our colleagues at the Affordable Housing Tax Credit Coalition indicate that the way this language was drafted in the bill would not have been very useful to the LIHTC program. AHTCC representatives noted stronger carry-back language would have been necessary for LIHTCs even if the Senate Finance Committee language had been retained. (This provision had been found in the Tax Section of the previous Senate Bill, Division B, Title I, Part V General Business Credit.)

Positive Aspects of the Legislation

SA 570 is very likely to be the final Senate version of the economic stimulus bill. After the tonight's vote at 5:30, NAHMA expects Senate leaders to move quickly to schedule a vote on final passage of HR 1. For this reason, NAHMA is pleased that many of the items we supported were retained in the Nelson-Collins compromise.

Two of NAHMA's Major policy priorities for 2009 are addressed in SA 570—fully funding 12 month terms for project-based Section 8 contracts and providing gap financing to cover the shortfall in equity investment for LIHTC properties. Although the language for 12-month contract funding is specific to FY 2008 renewals, we believe this is a major step forward. We will continue to strongly advocate for fully-funded 12-month contracts as Congress wraps up the FY 2009 appropriations process. Likewise, the gap financing for LIHTC is essential to helping shovel-ready new construction and preservation deals move forward. NAHMA continues to advocate for a number of short-term and long term solutions to stabilize and restart the LIHTC marketplace, but our emphasis remains on the need for gap financing. Additionally, we are pleased that Senator Cantwell successfully persuaded Senator Nelson and Senator Collins to include the LIHTC accelerator in SA 570. This language should help attract investment back to the LIHTCs.

Disappointing Aspects of the Legislation

NAHMA believes the provisions in SA 570 for energy retrofit grants/loans need revision. First, NAHMA was disappointed to see such a significant drop in funding. We had also hoped the language would include Section 236 properties in the eligibility criteria. Likewise, the compromise retained Senate Appropriations Committee requirement that owners who receive the grants/loans must commit to at least an additional 15 year affordability period. NAHMA is concerned about this lengthy commitment and believes ways to ensure affordability for extended periods would be more appropriately considered in the context of the forthcoming preservation bill.

We were also disappointed SA 570 did not include a 5-year carry-back for LIHTCs which could have been used to offset Alternative Minimum Tax liability. This provision would help attract investors to the LIHTC program.

NAHMA's Position

NAHMA supports SA 570, which will soon become the final Senate version of HR 1.

As House and Senate negotiators work out the differences between their bills, NAHMA urges them to include the following provisions in the final conference bill:

- $2.13 billion to fully fund project-based Section 8 12-month contracts (Senate);
- $2.5 billion grants or loans for energy and green retrofit investments in assisted housing, without extended use restrictions (House);
  - Additionally, NAHMA would like the conference bill to include a technical correction which expands eligibility to Section 236 properties;
- $2 billion in gap financing to fill the shortfall in equity investment for LIHTC properties (Senate);
  - If possible, we would like conferees to raise this appropriation to $5 billion in order to cover the estimated equity shortfall;
- Temporarily allow state housing finance agencies to exchange up to 40 percent of their LIHTC allocations for cash "subawards" to LIHTC properties as an additional equity investment gap financing tool (House);
- LIHTC accelerator of 200 percent for the first three years (Senate);

NAHMA agrees with our industry partners in the investment and development communities that Congress should pass a meaningful 5-year carry-back for LIHTCs to help stabilize investment. Since this provision was excluded from the House and the presumed Senate version of HR 1, it is unlikely to be included in the final conference bill. We urge Congress to include a 5-year carry-back for LIHTCs in the earliest available legislative vehicle.

Finally, NAHMA will continue to advocate for the highest possible levels of funding for affordable housing programs administered by HUD and USDA-RHS in the appropriations process. Congress is expected to begin work on an omnibus appropriations bill to finalize FY 09 spending very soon. Most discretionary government programs are receiving their funding through a temporary "continuing resolution" which expires March 6.