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Mid-Term Election Results Present Affordable Housing Industry with Victories, Challenges

By Alex Ruiz, Staff Writer, Novogradac & Company LLP

Part one of two

When Congress recessed on October 17, it left several housing measures for the post-election lame-duck session – or later – including fiscal year 2003 funding for the U.S. Department of Housing and Urban Development (HUD). Prospects for a productive session, which convened November 12, were uncertain after last month's elections. Despite the Republicans' victory in taking control of Congress, Dean Barkley, the third-party activist appointed interim senator from Minnesota, announced a week after the election that he would not side with either party during his short stay in office, allowing Democrats to keep control of the Senate during the lame-duck session.

Lame-Duck Legislation

It was unclear at first if progress could be made before the end of the year, or whether the affordable housing industry would have to wait until next year's 108th Congress to see action on any major legislation. On November 15, however, the House of Representatives passed S. 2239, the FHA Down payment Simplification Act of 2002, a measure that will promote housing affordability and expand rental housing and homeownership opportunities. The bill includes several provisions designed to enhance housing affordability, including indexing FHA multifamily loan limits to inflation, permanently extending the FHA down payment simplification process and repealing a scheduled increase in the Ginnie Mae guaranty fee. The Senate passed S. 2239 last month before adjourning for the November elections, and at press time it had been sent to President Bush, who was expected to sign it.

After the homeland security bill, it was expected that the 11 incomplete 2003 spending bills, including HUD/VA/Independent Agencies appropriations, which failed to pass during the regular session, were among the highest priorities for the lame-duck session. But appropriations, which was originally due for passage October 1, was delayed yet again as the House voted 270 to 143 to shelve all 11 spending bills. The Senate was expected to also pass the continuing resolution to delay passage of the incomplete spending measures until the new Congress reconvened Jan. 7.

Also, an issue at the top of the National Multi Housing Council's (NMHC) list of legislative priorities – terrorism insurance – showed promise. The House was the first to sign off on a version of the legislation, passing a bill by the end of 2001; the Senate followed with its version earlier this year. With pressure from President Bush to pass the measure, NMHC says it stands a good chance of becoming law before the end of the calendar year.

At press time, the House had passed a compromise version of terrorism insurance legislation, signing off on a bill that calls for the government to cover 90 percent of insured terrorism-related losses beyond \$15 billion annually over the next three years. The federal insurance backstop has a cap of \$90 billion per year. On November 20, the Senate voted 86-11 to approve H.R. 3210, the Terrorism Risk Insurance Act. President Bush was expected to sign the measure into law the following week. According to NMHC, the most immediate impact of the bill is that it voids, as of the date of the law's enactment, any existing terrorism exclusion found in commercial property, general liability, workers' compensation and other insurance lines.

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For a future qualifying terrorist attack, federal funds will pay 90 percent of an insurance company's terrorism-related losses once the insurance company's losses exceeded specified levels. Apartment owners and other insured parties may be obligated to pay as much as a 3 percent premium surcharge to repay the federal subsidy if the insurance company's total premiums fall short of specified levels. Total federal aid is capped at \$100 billion per year for each of the three years.

The bill also includes legal protections for property owners. Specifically, it only allows punitive damages if a firm knowingly participates in, conspires, aids and abets, or commits an act of terrorism. It also protects owners from facing multiple claims from the same event in several jurisdictions.

What 108th Congress May Bring

Looking beyond the lame-duck session, the impact of the mid-term election results will be mixed. "We've lost a few housing advocates, like Marge Roukema (R-N.J.), who retired," says David Gasson, vice president for public affairs at Boston Capital. He also points to returning housing advocates such as Representatives Nancy Johnson (R-Conn.) and Charles Rangel (D-N.Y.), and Senators Rick Santorum (R-Penn.) and John Kerry (D-Mass.) as likely sources of support in the coming few years. "For the most part, our 'white knights' are still there," Gasson says. "People-wise, I don't see much of a difference coming from the mid-term elections," he says. "However, as far as the change in power in the Senate, there will be changes, particularly in areas such as the Section 8 program and funding for HUD programs."

Gasson says the most significant impact of the election will be a double shift in focus. First, the possibility of a war with Iraq is a major threat to funding for housing in 2003. Gasson expects the national deficit to grow, especially as the economy lolls in the current "soft patch," described last month by Federal Reserve Chairman Alan Greenspan. Historically, when this is the case, legislators – especially those who are not housing or social program advocates – have gone to HUD to make budget cuts. "Housing is the step-child of federal programs," he says. "If something else comes up, they'll go to housing for sacrifices, at least in the immediate term."

As such, Gasson doesn't expect many, if any, new programs to be funded in 2003 and warns that existing programs may face budget cuts. "If we were in the shape we're in now two years ago, we never would have gotten the cap increase," he says. "We're going to have to be cautious and vocal to safeguard our turf at both the federal level and state level. The housing industry will be playing the nervous, over-protective mother guarding her cubs."

The second shift in focus will be in increased support for homeownership rather than rental programs, despite a national homeownership rate Gasson estimates between 68 and 73 percent. "There will be a strong emphasis on homeownership as opposed to rental programs from the administration. On the

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other hand, there's a saturation level of how many people need to be or should be homeowners, and how many are 'natural renters.' Housing advocates are concerned that the administration is putting such an emphasis on homeownership when the level is already so high, and eschewing responsibility in the rental housing market," Gasson says. "They are worried about what's going to happen to rental programs. You hate to see [the rental housing market] being ignored, which is something we're starting to see."

But even with the staunch support of the administration and Bush's own efforts to encourage a single-family affordable housing tax credit, Gasson says it's unlikely to pass anytime soon, chiefly because of its \$10 billion price tag. But there is some potential for other housing issues to make progress he says, including reform of the 10-Year Rule and TAMs legislation. "There is potential for some of them to pass, because they are relatively less expensive, but we will have to be dogged in our pursuit," he says.

Leadership in the 108th Congress

At press time, the following leadership elections and appointments for the 108th Congress had been made. Committee assignments and appointments or elections of some committee chairs had yet to be determined. (For a related story, see the Washington Wire on page 16.)

In the Senate:

- Majority Leader Trent Lott (R-Miss.)
- Majority Whip Mitch McConnell (R-Ky.)
- Chair, Republican Policy Committee John Kyl (R-Ariz.)
- Chair, Republican Senate Campaign Committee George Allen (R-Va.)
- Minority Leader Tom Daschle (D-S.D.)
- Minority Whip Harry Reid (D-Nev.)
- Conference Secretary Barbara Mikulski (D-Md.)

In the House:

- Majority Leader Tom Delay (R-Texas)
- Majority Whip Roy Blunt (R-Mo.)
- Chair House Republican Conference Deborah Pryce (R-Ohio)
- Chair, Republican Congressional Campaign Committee Thomas Reynolds (R-N.Y.)

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- Minority Leader Nancy Pelosi (D-Calif.)
- Minority Whip Steny Hoyer (D-Md.)
- Caucus Chair Rob Menendez (D-N.J.)
- Assistant to the Leader John Spratt (D-S.C.) ✦

Next month: Highlights of state and local elections.

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