

Congress Considers Housing Stimulus Package

By Michael J. Novogradac, CPA

On May 8, the U.S. House of Representatives voted 266 to 154 to pass the American Housing Rescue and Foreclosure Prevention Act of 2008, H.R. 3221, an attempt to respond to the housing crisis caused by a meltdown in the subprime mortgage market, combines a number of bipartisan amendments, including measures that would bring changes to the low-income housing tax credit (LIHTC) industry, as well as modernize the Federal Housing Administration (FHA) and reform the Government Sponsored Enterprise (GSE) entities, Fannie Mae, Freddie Mac and the Federal Home Loan Banks, creating a new and more powerful agency to regulate them.

Meanwhile, lawmakers in the Senate were wrangling to produce their version of compromise legislation, which on May 20 was approved by the Committee on Banking, Housing, and Urban Affairs by a 19-2 vote. The Senate committee proposal for housing stimulus legislation would insure as much as \$300 billion in mortgages and create a new regulator for Fannie Mae and Freddie Mac. The package approved by the Senate committee does not include any improvements to the low-income housing tax credit or other provisions of H.R. 5720, the Housing Assistance Tax Act of 2008, which was included in the House approved housing stimulus package, or S. 2666, introduced on February 26 by Sen. Maria Cantwell, D-Wash. S. 2666 would make several changes to the LIHTC including changing its name to the Affordable Housing Tax Credit. A comparison of the provisions of S. 2666 and H.R. 5720 can be found on page 10.

Until now, the Democratic-controlled Congress has been at loggerheads with Republications and the administration over specifics in rescuing those who find themselves mired in one of the worst housing slumps the country has ever seen. The Bush administration and Republican lawmakers

oppose using taxpayer funds to bail out speculators and irresponsible lenders while Democrats contend that government spending is needed to stabilize neighborhoods and help struggling borrowers. The White House's initial reaction to the May 20 vote was somewhat agreeable so many housing advocates are encouraged that a final agreement could be near.

"We have long called for strong, comprehensive GSE reform," said U.S. Treasury Secretary Henry Paulson on May 20. "This is the most significant component of the legislation passed today, creating a world class financial regulator with appropriate authorities to oversee the GSEs' operations. Fannie Mae and Freddie Mac are guaranteeing a greater share of mortgages than ever before. It's never been more critical that markets have confidence in how these companies are overseen and regulated."

Despite the heated negotiations leading to the Senate committee agreement, CNN Money was reporting on May 19 that Committee Chairman Christopher Dodd, D-Conn., and Senior Republican Member Sen. Richard Shelby, R-Ala., had reached an agreement and the compromise bill would create a fund to spur affordable housing that in the first year would use the funding to backstop the FHA mortgage program.

The Hill.com reported that day that the possible Senate deal could threaten the housing trust fund intended for financing the construction of housing for low-income families. The online media source was reporting that under the tentative agreement, a portion of a \$600 million affordable housing trust fund financed by Fannie Mae and Freddie Mac would be diverted to cover the projected \$1.7 billion cost of the FHA mortgage rescue plan.

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Also on May 19, Paulson, who briefed President George W. Bush on the housing legislation during a brief joint public appearance in the Oval Office, indicated he supported the passage of the Senate committee's legislation. "The House has passed a bill that makes good progress towards this goal, and I am pleased to see the Senate Banking Committee working hard to reach agreement on its version. The time has come to get this done," Paulson was quoted as saying.

In response to what some in the industry see as a setback for affordable housing, the Associated Press reported that "affordable housing advocacy groups unleashed a barrage of telephone calls and e-mails on senators Thursday [May 15] to protest the emerging agreement." AP further reported that Rep. Barney Frank, D-Mass., the House Financial Services Committee chairman who wrote the House bill, said his hopes for a broad housing agreement with the White House were fading along with his optimism but he still felt there was a "reasonable chance" that affordable housing provisions in H.R. 3221 would muster support in the Senate.

The bill now goes to the full Senate and if approved there, it would be combined with the House passed version through a conferencing process. After the May 20 vote, Dodd said he believed the bill would be considered on the Senate floor soon after the Memorial Day recess and Frank expressed hope to complete a final bill and send it to the president by the July 4 congressional recess.

Background — The assembly of H.R. 3221

In 2007, the House of Representatives passed legislation aimed at creating a national Affordable Housing Trust Fund as well as proposals targeting GSE reform. The monies in the fund would be used to expand rental housing for low-income individuals and families with the funds generated from Fannie Mae's and Freddie Mac's profits. Neither proposal managed to gain any traction in the Senate. That is until Democrats like Ways and Means committee Chairman Charles Rangel, D-N.Y., decided to tie the foreclosure rescue plan to the administrations desire for GSE reform.

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Before H.R. 3221 was approved, the House amended it to include the provisions of H.R. 5720, the Housing Assistance Tax Act of 2008. This second piece of the housing legislation, introduced by Rangel in April, included the LIHTC modernization proposals and received strong bipartisan support. It includes a series of provisions to provide better coordination between housing tax credits, multifamily housing bond programs and other housing programs under the Department of Housing and Urban Development as well as the Rural Housing Service. See related story on page xx.

H.R. 5720 provided \$11 billion in tax benefits, including \$10 billion in mortgage revenue bonds for states, and improves access to low-income housing. The temporary increase in mortgage revenue bond authority will allow the issuance of an additional \$10 billion of tax-exempt bonds to refinance subprime loans, provide loans to first-time homebuyers and to finance the construction of low-income rental housing. It also would exempt LIHTCs from the alternative minimum tax (AMT), provide a temporary increase in low-income housing tax credits, facilitate the development of affordable apartments, improve coordination with other important federal housing programs, provide incentive for more private investment in the program, help preserve existing affordable housing and simplify the administration of the program. We urge Congress to include the provisions of H.R. 5720 in any final housing legislation.

Also included in the final bill was H.R. 1427, the Federal Housing Finance Reform Act of 2007, which would strengthen regulation of the GSEs. The bill was introduced by Congressman Barney Frank, D-Mass., on March 9, 2007 and passed the House on May 22 by a vote of 313-104.

This amendment raises the GSE loan limits for single family homes in high cost areas, so that these entities can purchase more loans in higher cost areas (thereby lowering interest rates for new homes and refinancings in those areas); expands liquidity in the mortgage markets by buying loans already made, freeing up money for new mortgages and refinances; and creates a new fund to boost the nation's stock of affordable rental housing.

The Expanding American Homeownership Act of 2007, which also became a part of H.R. 3221, enables the FHA to use risk-based pricing to more effectively reach underserved borrowers. The amendment includes expanding affordable mortgage loan opportunities for families that would otherwise turn to subprime lenders, and for seniors through expanded access to reverse mortgages through Federal Housing Administration reform. This measure passed the House in September and was referred to the Senate Committee on Banking, Housing and Urban Affairs. This amendment's FHA provisions with respect to guaranteeing certain refinanced home mortgages has drawn a veto threat from the White House.

We in the industry have for years championed the production of rental housing for the nation's neediest individuals and families. While the Senate negotiates with the House of Representatives and President Bush on final compromise legislation, the industry must send a loud and clear message that steps must be taken to not only bring the housing market back to balance and put in place requirements that will guard against any future housing market failures, it is also paramount that legislators act to ensure that the country does not, in the words of Candy Hill, a lobbyist for Catholic Charities USA, "grow overnight [a] population that is un-housed." ❖

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Side-by-Side Comparison of Housing Credit and Tax-Exempt Bond Legislation HR 5720 and S 2666 (as of April 26, 2008)		
Provision	HR 5720 (Rangel) as passed by Committee	S 2666 (Cantwell-Smith) as introduced*
AMT Relief	Housing credits can be used against AMT (effective for buildings placed in service after 2007); historic credits can be used against AMT (effective for QREs taken into account after 2007); interest on residential rental tax-exempt bonds not an AMT preference item (effective for bonds issued after enactment)	Housing credits can be used against AMT (effective for taxable years beginning after enactment)
Cap Increase	For 2008-09, per capita cap increase of \$0.20 per year	No comparable provision
Credit Percentages	70% Credit (9%) Percentage is the greater of the average for the preceding calendar year or the regularly determined percentage for the month in question; no change to 30% Credit, effective for buildings placed in service (PIS) after enactment	Flat 9% and 4% Credit Percentages
Credit Percentage for Existing Building	Acquisition costs eligible for the 9% credit, effective for buildings PIS after enactment	No comparable provision
Federal Subsidies	Does away with the concept of "below market Federal loans" thereby allowing 9% credits on all properties except if bond financed, effective for buildings PIS after enactment	Similar provision
30% basis increase	Allows housing credit agencies to provide up to 30% more credits for any building if needed for financial feasibility (not applicable to bond financed projects), effective for buildings PIS after enactment	Provision allows up to 30% more credits for projects designated pursuant to the state's QAP (applies to bond financed projects)
Increased Rehab Threshold	Minimum rehab threshold is raised to the greater of \$6000 (adjusted for inflation) or 20% of basis	No comparable provision
Community Service Facility	Increases allowable basis to 15% of first \$5M and 10% thereafter	Increases allowable basis to 20% of first \$5M and 10% thereafter
Federal Grants	Amends the rules on reducing eligible basis by Federal grants, language is clarified in Committee Report—rental, interest reduction and other operating subsidies are NOT Federal grants that reduce basis	Directs Treasury Department to issue regs specifying rental assistance and operating subsidies are not Federal grants requiring basis reduction
Related Party Rules for Acquisition Credits	Amends the 10% threshold to 50%; effective for buildings PIS after enactment	Similar provision
Section 8 Moderate Rehab	Repeals the prohibition on use of credits with Sec. 8 Mod Rehab	Similar provision
Carryover Test	Provides one year for meeting the 10% carryover allocation test	No comparable provision
Recapture Bonds	Does away with necessity to post recapture bonds on disposition of property or interest therein, substitutes an extended statute of limitations; effective for interests disposed of both after and before enactment of Act; as to prior dispositions, allows taxpayer to cease to be subject to bond requirements; provision sunsets in five years	Similar provision as to repeal of recapture bonds, but adds Treasury reporting requirements; modifies penalty provisions; effective for interests disposed of both after and before enactment of Act
Energy efficiency and historic features	QAPs must taken into account energy efficiency standards and historic character, effective for allocations after 2008	No comparable provision
Student Rule/Foster Children	Foster care students not taken into account for student rule purposes, effective for determinations made after enactment	No comparable provision

Source: Richard Goldstein, Esq., Nixon Peabody LLP, April 26, 2008

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Rural Median Incomes	Median incomes for rural projects measured by reference to the greater of area or national non-metro median income, but bond projects excluded, effective for buildings PIS after enactment	Similar provision but no exclusion for bond projects
Tax-Exempt Bond Recycling	Tax-exempt residential rental bonds may be recycled (i.e., treated as refunding bonds), but only once, to the extent of original principal balance of first bonds if refunding bond is issued within 6 months of loan repayment, not later than 4 years of original issuance; refunding bond (i.e., the second bond) does NOT generate new "automatic" housing credits; effective for loan repayments made after enactment	No comparable provision
Coordination of Credit and Bond Rules	<ul style="list-style-type: none"> • Student rule applied on building, not project basis • Credit student rules applied to bond projects • SROs (within meaning of Sec. 42) allowed for bond purposes 	Similar provision
AMI Revisions	AMIs may not decrease from prior year, beginning with 2009; for HUD hold harmless properties, beginning in 2009, median income increases by difference between 2008 and the then current year; effective for determinations of AMI after 2008	No comparable provision
Income re-certifications	Income re-certs not required in 100% LIHTC projects; effective for years ending after enactment	Present law discretionary waiver of tenant re-certs is made mandatory
Housing Bonds	Temporary increase in multi-family and single family bond housing cap = \$10 M for 2008, allocated to states based on population, subprime refinancings allowed temporarily	No comparable provision (but temporary cap increase contained in other Senate-passed legislation)
Federal Home Loan Bank Guarantees	FHLBs allowed to guarantee tax-exempt bonds	No comparable provision
Re-naming the program	No provision	Renames the program the "Affordable Housing Credit"
Scattered site projects	No provision	Allows mixed income scattered site projects
Ten Year Rule	No provision	Repeals ten year rule for acquisition credits
		*Generally, the provisions of the Cantwell bill are effective for housing allocations made and bonds issued after enactment

Source: Richard Goldstein, Esq, Nixon Peabody LLP, April 26, 2008

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