

In Shadow of Other Issues, Affordable Housing Advocates Continue Push for Legislative Progress

By Robert S. Thesman, CPA

In addition to the flurry of legislation to rebuild the Gulf Coast after last summer's hurricanes, bills introduced this year tackle some other issues important to the affordable housing industry. They include exit tax relief, the preservation of rural housing, reauthorization of the Mark-to-Market program through the end of the 2011 fiscal year, reforming the way the federal government responds to long-term housing needs created by natural disasters, amending the Internal Revenue Code (IRC) of 1986 to encourage investment in affordable housing and replacing the recapture bond provisions included in the low-income housing tax credit (LIHTC) program.

Here, in a mid-session rundown, are some of the bills that the industry is promoting to ensure adequate and safe housing for all citizens.

S. 3616: Affordable Housing Preservation Tax Relief Act

On June 29, Sens. Charles Schumer, D-N.Y., Gordon Smith, R-Ore., Jack Reed, D-R.I. and Patty Murray, D-Wash., introduced a bill, S. 3616, to preserve federally assisted, affordable housing stock.

"This issue has been percolating for about four years," says Denise Muha, of the National Leased Housing Association (NLHA), noting that the Millennium Housing Commission report to Congress made a case for exit tax relief and in the intervening years industry leaders and organizations have worked on a framework for new legislation. That framework began to take shape September 20, 2005 when Reps. Jim Ramstad, R-Minn. and Ben Cardin, D-Md., introduced the Affordable Housing Preservation Act of 2005 (H.R. 3715). "We've been working for 18 months to get someone from the Senate interested," Muha says.

Disposing of an interest in qualified affordable housing without paying a recapture tax if the property is sold is of great importance in today's market, Muha says, because many affordable housing

properties are in weak rental markets with high values so the properties cannot be sold for enough to pay investors' tax liabilities. She notes that many owners, rather than selling the properties at substantial tax cost, or investing new capital in them, are holding the properties until their death so that their heirs receive stepped-up basis. "There's no incentive for them to put improvements into projects but with tax relief it frees them up to put money in renovations and allows them to be kept for 30 years," she says.

An Ernst & Young cost estimate on exit tax relief, based on data from HUD, determined that the cost to Treasury would be \$288 million over 10 years.

S. 3616 would waive the depreciation recapture tax liability for federally assisted housing investors if they sell the property to a qualified preservation entity. Eligible properties include housing receiving assistance under the Section 8, Section 221(D)(3), Section 236 and rural housing Section 515 programs. The buyer must agree to invest new capital into the property and preserve it as affordable housing for an additional 30 years. S.3616 has been referred to the Senate Finance Committee with no action scheduled.

S. 3616 is similar to H.R. 3715 in that it requires at least 51 percent of a property's units be affordable to families with incomes at 60 percent or less of area median income and state housing credit agencies must review transactions for eligibility and feasibility and monitor compliance with use restrictions. S. 3616 is unlike H.R. 3715 in that tax credit housing properties would not be eligible for tax relief.

The House bill was referred to the Committee on Ways and Means.

H.R. 5527: The Mark-to-Market Extension Act of 2006

Introduced on June 6, H.R. 5527 would reauthorize the Mark-to-Market program through the end of the 2011 fiscal year. By restructuring mortgages and

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lowering rents, the program reduces the federal costs of Section 8 properties. An amendment offered by Subcommittee chairman Deborah Pryce, R-Ohio, would increase the exemption rent authority to 9 percent of the portfolio; extend eligibility to properties with at-or-below-market rents; expand eligibility to disaster-damaged properties; and create a five-year window for debt relief for non-profit owners, was approved by a voice vote.

The Congressional budget Office CBO estimates that enacting H.R. 5527 would reduce direct spending by a total of \$188 million over the 2006-2011 period. Most of the estimated savings would be recorded in the year of the bill's enactment. For this estimate, CBO assumes that H.R. 5527 will be enacted by the end of fiscal year 2006. Savings would result principally from avoiding defaults on FHA-insured mortgages that are anticipated under current law. Those estimated FHA savings would be reflected in the budget on a present value basis as "loan modifications" under the provisions of the Federal Credit Reform Act. Subject to the availability of appropriations, CBO estimates that implementing H.R. 5527 would result in savings of \$33 million over the next five years from the reduction of HAP contract rents, assuming that appropriations are reduced accordingly. CBO also estimates that expanding exception rent authority from 5 percent of the portfolio to 9 percent would cost \$8 million, assuming appropriation of the necessary amounts. Thus, CBO estimates that implementing this bill would yield net discretionary savings of \$25 million over the 2007-2011 period.

The Subcommittee on Housing and Community Opportunity approved H.R. 5527 on June 8.

H.R. 5393: Natural Disaster Housing Reform Act

In late May, U.S. Rep. Richard H. Baker, R-La., a senior member of the House Financial Services committee, and the committee's top-ranking Democrat, Rep. Barney Frank of Massachusetts, introduced legislation that would reform the way the federal government responds to long-term housing needs caused by natural disasters. The Natural Disaster Housing Reform Act, H.R. 5393, would mandate that after a

presidential disaster declaration under the Stafford Act, a governor may request the president declare that a long-term housing response is necessary. Upon making a finding that disaster victims may be displaced from their residences for more than 30 days, the president may designate HUD as the lead agency to provide housing assistance to disaster victims. Upon introduction the measure was referred to the Committee on Financial Services the Committee on Transportation and Infrastructure.

H.R. 5039: Saving America's Rural Housing Act of 2006

Reps. Geoff Davis, R-Ky., Frank, Subcommittee chairman Robert W. Ney, R-Ohio, Arthur Davis, D-Ala., Gary G. Miller, R-Calif., Rubén Hinojosa, D-Texas, and Rick Renzi, R-Ariz., on March 29 introduced H.R. 5039 that would create a revitalization program for the United States Department of Agriculture (USDA) Rural Development Agency's multifamily housing assistance program, known as section 515. Nearly 500,000 of the poorest rural residents are helped annually by this program

The rural multifamily housing program allows USDA Rural Development to make direct loans to owners and developers of affordable apartment housing. Section 515 apartments are often the only affordable housing available for low-income families in many rural communities.

According to Richard Michael Price, of the law firm Nixon Peabody LLP, the bill, if enacted, would recognize the need to save the aging, resource-starved Section 515 multifamily housing portfolio administered by the Rural Housing Service. It would also provide broad authority to restructure existing Section 515 loans and subsidy and would staff that effort through participating administrative entities.

To preserve rural housing, H.R. 5039 would allow new financing for ailing properties; repeal restrictions on owners who have fulfilled their contractual obligations to the USDA so that they may prepay section 515 loans without resorting to litigation; authorize a voucher program to ensure that tenants are not

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disadvantaged by prepayment; and require owners to provide residents with detailed notices of prepayment

H.R. 4873: Housing Bond and Credit Modernization Act.

In March, Ramstad introduced H.R. 4873, a bill to encourage investment in affordable housing. The measure to amend the Internal Revenue Code of 1986 would make several changes to the low-income housing tax credit (LIHTC) program, including renaming it the Affordable Housing Tax Credit, modifying the rules for determining applicable percentage, providing an increase in credit for buildings in state designated areas, modifying the scattered site rule and allowing tax credits for Section 8 moderate rehabilitation developments. H.R. 4873 would also make several changes to the rules governing mortgage revenue bonds and qualified residential rental project exempt facility bonds. Last month, the National Council of State Housing Agencies (NCSHA) reported that Ramstad and Rep. Richard Neal, D-Mass., had circulated a Dear Colleague letter to all House members urging them to cosponsor Ramstad's bill. As of July 10, the bill had the support of 18 cosponsors. NCSHA urges the industry to use the Dear Colleague letter and the list of industry supporters (find them at www.NCSHA.org) as a reason to go back to House members and urge them to cosponsor H.R. 4873 and fight for its inclusion in any tax legislation Congress advances this year. The bill

was referred to House Ways and Means.

S. 2366: Repeal of the Recapture Bond Provision

Also in March, Sen. Blanche Lincoln, D-Ark., introduced S. 2366, the companion bill to H.R. 1468, which was introduced last year by Rep. Nancy Johnson, R-Conn. The bills would replace the recapture bond provisions included in the low-income housing tax credit (LIHTC) program. The legislation would repeal the requirement under IRC Section 42(j)(6) that requires an investor seeking to dispose of an interest in an LIHTC property within the initial 15-year compliance period to post a surety bond in order to avoid future tax liability, provided the property was reasonably expected to remain a qualified low-income development for the remainder of its compliance period. The bill was referred to the Committee on Finance.

According to National Affordable Housing Management Association (NAHMA), the bond provisions were originally enacted to prevent investors from claiming housing credits and then transferring them to a "straw party" with minimal assets, therefore avoiding the 15-year continuing compliance requirements. Difficulties have arisen with the provision, including the small size of the surety market that writes recapture bonds, the bonds' increase in premiums. ❖