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New Housing Legislation Requires LIHTC Industry to Act Quickly

By Michael J. Novogradac, CPA

On Saturday, July 26, in a rare weekend vote, the Senate, by a vote of 72 to 13, signed off on and sent to President Bush for his signature the Housing and Economic Recovery Act of 2008, a package of housing stimulus measures that Congress crafted as a response to the housing crisis. This followed a 272-152 vote in the House on July 23 and a 63 to5 vote in the Senate on July 11. The President, after several months of threatening to veto the bill, released a statement on July 24 in support of the bill, lifting his earlier veto threat.

We are pleased that with this legislation the country will not only see relief for homeowners facing foreclosure and incentives for home buyers, but also can hope to see a more balanced housing policy in which rental housing and homeownership share a more equal footing in providing housing for the nation's households. However, the passage of H.R. 3221 will necessarily require the affordable housing industry to take some quick action to institute and execute the changes it brings about.

H.R. 3221 combines a number of bipartisan amendments that will affect the affordable housing industry, including measures that would bring changes to the Low-Income Housing Tax Credit program (LIHTC), modernize the Federal Housing Administration (FHA) and reform the government sponsored enterprises (GSE) Freddie Mac and Fannie Mae.

The housing stimulus legislation offers as much as $300 billion to assist troubled homeowners and the GSEs. This added provision allows Treasury temporary authority to purchase obligations and securities from Fannie Mae and Freddie Mac, and authority for the Treasury Secretary to increase Treasury's line of credit to Fannie Mae and Freddie Mac for the next 18 months if the Secretary determines an increase is necessary. The intent of the temporary powers is to provide liquidity and calm and stabilize the market.

The House-passed version also added other new provisions, including the Housing Tax Credit Coordination Act of 2008, which the House passed last May as part of an earlier version of housing stimulus legislation. The act streamlines FHA multifamily insurance processing for housing tax credit transactions, increases project-based voucher program flexibility, allows qualified and willing HFAs to underwrite Section 202 transactions, and establishes new housing tax credit tenant data collection requirements.

There was something in the bill for everyone to dislike. House Financial Services Committee Ranking Member Spencer Bachus, R-Ala., after the House vote criticized the inclusion of an affordable housing trust fund, calling it "irresponsible."

In his statement, Treasury Secretary Henry M. Paulson, who worked to include the added GSE reform measures, expressed his disappointment with what he called "extraneous provisions that we have opposed as detrimental to our efforts to get through the housing correction quickly." Paulson tempered his displeasure by noting that the GSE portions of the bill "are orders of magnitude more important to turning the corner on the housing correction and supporting our markets and our economy."

Barney Frank, D-Mass, chairman of the House Financial Services Committee, who said the bill was "less than a perfect solution," also noted it enjoyed support from a

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wide coalition of bankers, housing advocates, governors and mayors. The White House had opposed the portion of the measure that would give grants to states to buy foreclosed properties and had threatened for months to veto the bill; however, any veto would likely have been overridden as the measure enjoyed considerable support in both the House and Senate.

"Secretary Paulson played a constructive role and helped the President reach this agreement after opposing many parts of this legislation. I'm so pleased that the White House issued the statement … that the President would not veto this bill," said House Speaker Nancy Pelosi, D-Calif. following the July 23 vote.

For those in the affordable housing industry, the passage of H.R. 3221 is very good news. It will, among other things, create housing trust and capital magnet funds and modernize the LIHTC program. The housing trust fund and the capital magnet fund would provide a steady stream of funding for affordable housing development, especially for very low-income families (for a related story, see The Buzz on page 16).

In the weeks leading up to the votes, leaders in the House and Senate attempted to work out the issues that remained between their different proposals but their efforts were unsuccessful and Senate leaders were not able to resolve those differences before sending its version of the bill back to the House. Upon passage by the House, Senate Majority Leader Harry Reid, D-Nev., requested unanimous consent to vote on the bill but Sen. Jim DeMint, R-S.C., said he would block any motion for unanimous consent. Reid then filed the required cloture motion. Once cloture is invoked, Senate debate is limited to 30 hours, making a vote on final passage of legislation likely within days, in this case three days.

LIHTC modernization provisions

The LIHTC program's current limit on the annual amount of federal LIHTCs that may be allocated by each state for 2008 is set at $2 for each person residing in that state. The bill would increase the limitation in 2008 and 2009 by an additional 20 cents per capita in a large popu-

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lation state and by 10 percent in the small state set-aside. The estimated cost of this proposal is $1.084 billion over 10 years.

Another provision would allow low-income housing tax credits generated from buildings placed in service after December 31, 2007 to offset the alternative minimum tax, or AMT.

"This will make the LIHTC program more desirable to a new class of potential investors," said Jim Arbury, senior vice president of government affairs for the National Multi Housing Council/National Apartment Association.

The bill also contains a number of proposals to simplify the technical rules relating to the LIHTC. The bill would establish a minimum credit rate of 9 percent for non-federally subsidized buildings (expires 12/31/2013); eliminate below-market federal loans from the definition of federally subsidized properties, allowing the 9 percent credit on all federally subsidized properties, except for tax-exempt bond financed properties, effective for buildings placed in service after date of enactment; provide state housing agencies the flexibility to allow the 30 percent eligible basis boost to sites not located in qualified census tracts or difficult to develop areas; clarify the rules relating to determinations of current income; provide developers with more time to satisfy the 10 percent test after the credits have been awarded (up to one year after receipt of allocation instead of the current six months); reform rules pertaining to sales of LIHTC housing buildings; allow projects to give preferences to individuals who share common characteristics; relax income rules for rural areas; and eliminate technical barriers to rehabilitating LIHTC projects. The estimated cost of these proposals is $254 million over 10 years.

The proposed bill would increase the minimum rehabilitation threshold for acquisition and rehabilitation credits to the greater of 20 percent of eligible basis or $6,000 per unit, effective for allocations made after date of enactment for non-bond financed developments and for projects financed with bonds issued after the date of enactment for bond-financed developments. In addition, H.R. 3221 would allow the rehabilitation tax credit to be used to offset the AMT.

Housing bond provisions

Many states have reached their limit on the annual amount of tax-exempt housing bonds that each may issue; this bill would increase the national limit in 2008 to allow for the issuance of an additional $11 billion of tax-exempt bonds to provide loans to first-time homebuyers, refinance certain subprime loans and finance the construction of residential rental housing. The estimated cost of this proposal is $1.475 billion over 10 years.

The bill also exempts interest income earned from housing bonds from the AMT, effective for bonds issued after date of the bill's enactment. The estimated cost of this proposal, including the LIHTC and rehabilitation offsets to the AMT, is $2.093 billion over 10 years.

Under current law, municipal bonds that are guaranteed by the Federal Home Loan Banks (FHLB) cannot qualify as tax-exempt bonds unless the bonds are use to finance housing programs. This bill would temporarily allow bonds guaranteed by the FHLBs to be eligible for treatment as tax-exempt bonds regardless of whether the bonds are used to finance housing programs. The estimated cost of this proposal is $126 million over 10 years.

Finally, H.R. 3221 contains a number of provisions aimed at providing continued assistance to taxpayers located with the GO Zone. Specifically, this bill allows those who claimed a deduction for a casualty loss to a principal residence in the GO Zone in an earlier year and subsequently received a Road Home grant to amend their earlier year tax return to reduce the amount of their casualty loss deduction in order to claim the grant tax-free. The bill also provides a waiver of a deadline on the start of construction of GO Zone property in order to be eligible for bonus depreciation and adds additional counties into the GO Zone for purposes of tax-exempt financing. The estimated cost of these proposals is $1.333 billion over 10 years.

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What's next for the affordable housing industry?

With the passage of The Housing and Economic Recovery Act, state housing agencies and other industry professionals will have to hit the ground running to implement the changes. Recommendations that were contingent up the bill's passage will need to be finalized and the changes prescribed by H.R. 3221 will have to be executed; deals in negotiation and applications in progress will need to be scrutinized and possibly reworked; and consultants, attorneys and accountants will be called up to vet the new legislation to identify and explain the benefits and challenges inherent in this legislation that will not only help struggling homeowners but stabilize the housing market and reform oversight of the GSEs. The affordable housing industry is not only up to the challenge, but eager to move forward.

For more on congressional action and other affordable housing industry updates, we invite you to listen to our weekly podcasts at www.novoco.com/podcast.php

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