

**AIMS Washington Update
NAA/NMHC Joint Legislative Program**

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MULTIFAMILY CAPITAL MARKETS

NAA/NMHC are following developments in the multifamily capital markets. While it is too early to assess the impact on the commercial property sector of the Lehman Brothers failure and the sale of Merrill Lynch, NAA/NMHC are actively working with the Federal Housing Finance Agency (FHFA) following its September 7 takeover of Fannie Mae and Freddie Mac. This dramatic action by the government to stabilize the two mortgage companies has raised many questions regarding the status of their multifamily lending programs.

As a result of our outreach to FHFA staff, on September 12 the agency issued a statement saying that business will continue as usual in the multifamily sector. It specifically states that the conservatorship “does not affect existing contracts, nor the authority of the Enterprises to enter into new contracts, nor their enforceability. As conservator, FHFA expects each Enterprise to continue underwriting and financing sound multifamily business. We also do not expect either company to liquidate its portfolio of Low-Income Housing Tax Credits or mortgage-revenue bonds.”

Under the conservatorship, each GSE portfolio is allowed to increase to \$850 billion by the end of 2009, after which their holdings would shrink about 10 percent a year until they reach \$250 billion each. The expansion of the firms’ retained portfolios should benefit the apartment sector since both companies retain the vast majority of multifamily loans they finance. The conservatorship expires at the end of 2009, leaving the next Congress and Administration to

determine their long-term future. NAA/NMHC have already begun to actively work with regulators and Congress to ensure that the long-term plans for the GSEs do not negatively affect their ability to serve as the key source of mortgage capital for the apartment industry. Given the rescue plan's heavy emphasis on securitization, we are stressing the importance of allowing the GSEs to hold multifamily mortgages they purchase in their retained portfolios. We have explained to the regulators that a "one size fits all" approach to GSE programs could have seriously negative consequences for multifamily lending.

We have noted that maintaining the agencies' ability to do portfolio executions will not adversely affect their soundness since multifamily loans represent a small portion (less than 12 percent) of the GSEs' total on-balance sheet holdings and their delinquency rates are a fraction of the delinquencies in the single-family market. The 60-day-plus delinquency rate on multifamily loans held or insured by the agencies is 0.11 percent for Fannie Mae and 0.03 percent for Freddie Mac. We will continue to work with regulators and lawmakers as the situation evolves and will continue to make the case that one key reason the apartment sector is out-performing nearly every other real estate sector is because of the capital provided by Fannie Mae and Freddie Mac in the midst of the current fiscal crisis.

ENERGY EFFICIENCY TAX INCENTIVES

Energy policy took center stage in Congress as it returned to work on September 8 for a short three-week session. On September 16, the House passed an energy bill (H.R. 6899) with several housing-related provisions. Among other things, the measure would establish HUD energy efficiency standards for single- and multifamily housing, give Fannie Mae and Freddie Mac additional credit toward their affordable housing goals for financing housing that meets energy efficiency standards, provide incentives for energy efficiency in FHA multifamily financing and add green development requirements to the HOPE VI program.

While NAA/NMHC support the goal of increasing the energy efficiency performance of the nation's real estate, we believe that it should be accomplished through incentives to offset costs and not mandates. We opposed provisions in the bill that would eviscerate the current building code system, impose specific performance metrics for existing buildings without regard to building age or cost of the upgrade, and create an uneven playing field for green

certification systems which could put developers who rely on code-based protocols at an administrative disadvantage if they compete for HUD funding.

The measure also included an \$18 billion energy tax title that would extend several NAA/NMHC-supported tax incentives, including a temporary \$1.80 per square foot tax deduction for energy-efficient commercial buildings and a 30 percent investment tax credit for solar energy and qualified fuel cell property that will expire on December 31 in the absence of Congressional action. (See the July 20, 2007 AIMS Environmental Update for more information.) Efforts to renew the energy tax incentives as well as an expired tax provision allowing immediate expensing for brownfields clean up have been mired in a partisan fight over whether extensions of existing tax law should be paid for by offsetting tax increases. The House bill includes controversial offsets that increase taxes on certain oil and gas producers that are opposed by many House and Senate Republicans (and some Democrats) as well as the Administration.

The Senate, meanwhile, is taking a different approach, focusing on legislation to extend the expiring tax incentives and likely postponing energy policy issues until after the tax legislation is completed. Senate leaders are set to consider tax legislation this week, with votes expected on two different amendments. First, is a fully offset \$17 billion package of energy tax provisions, including provisions renewing the commercial building incentive through 2013 and the solar energy/fuel cell property provisions through 2016. The second amendment is expected to be a partially offset tax package that extends a number of non-energy related expiring and expired tax measures, such as the New Markets Tax Credit and the brownfields expensing provision through 2009, and a one-year patch for the Alternative Minimum Tax (AMT). The package is also expected to include disaster relief for the Midwest, including a temporary expansion in the Low-Income Housing Tax Credit (LIHTC) for affected states.

The ultimate outcome of the Congressional energy efforts remains unknown. While Senate leaders have expressed concern about several provisions in the House-passed bill related primarily to offshore drilling and revenue sharing with the states that allow it, there is a strong sense that they will have to pass something on energy if they are to win elections back home. There is bipartisan support for extending the energy tax incentives and many lawmakers consider an AMT patch "must pass" legislation. It is unclear if the House and Senate will be unable to resolve their differences and pass a single compromise energy bill or a separate tax bill that includes the energy tax provisions before they adjourn at the

end of September. If not, there is still an opportunity to pass it during an expected post-election "lame duck" session.

NAA/NMHC OPPOSE REVERSING BAN ON "CHARITABLE" DOWNPAYMENT ASSISTANCE

NAA/NMHC are opposing efforts to overturn the recent Congressional ban of so-called "charity" downpayment assistance schemes. Under these programs, a nonprofit provides a downpayment to the buyer and is then reimbursed by the seller, often a home builder. The housing stimulus law (P.L. 110-289) enacted in July banned them as of October 1, 2008 because they are twice as likely to result in foreclosure and threaten the financial viability of the Federal Housing Administration (FHA). Other critics say that builders simply increase the price of a new home by the price of the downpayment.

On Tuesday, the House Financial Services Committee passed a bill (H.R. 6694) that would overturn the ban and purportedly protect the FHA by limiting the use of seller-financed downpayment assistance to households with credit scores in the 620 to 680 range. Specifically, it would retain the program for anyone who has a credit score of 680 or higher and require those with a credit score from 620 to 679 to pay a premium to participate. NMHC analysis of HUD data shows, however, that risk-based premiums will not protect the FHA because households with the highest credit scores required by the bill are still twice as likely to default if they use seller-financed downpayment assistance. Furthermore, these programs perpetuate the tragically failed policy of zero-downpayment lending that helped create the current foreclosure crisis. NAA/NMHC staff met with HUD Secretary Steve Preston on September 12 to review the data with him and to advocate for HUD's continued strong stance in opposition to seller-financed downpayments. Prospects for enactment are unknown. The measure is expected to pass the full House if it comes up for a vote before Congress adjourns. Support for retaining the ban is stronger in the Senate, however.

AMENDMENTS TO THE AMERICANS WITH DISABILITIES ACT (ADA) PASS

Congress has passed legislation amending the ADA that President Bush is expected to sign. The measure (S. 3406), which passed the Senate on

September 11 and the House on September 17, would reverse court decisions that have narrowed the ADA's interpretation of disability. The House passed comparable, but not identical, legislation (H.R. 3095) in June. Among other things, the measures specifically address a series of rulings by the Supreme Court and lower courts that denied ADA coverage to individuals who used medication or medical equipment to manage their disabilities.

The bill represents a compromise between the business community and disability advocates to properly restore individual protections under the ADA without imposing undue burdens on employers. Earlier versions of the bill were strongly opposed by the business community because they would have broadened the definition of disability under the ADA beyond what Congress intended when the original statute was enacted. The original ADA language defines a physical or mental impairment as one that substantially limits one or more major life activity. Earlier versions of the bill were strongly opposed by the business community because they would have revised that definition to include anyone who has a physical or mental impairment, has a record of such impairment or is regarded as having such an impairment. Without qualifying language, this would have extended coverage to anyone with an impairment such as poor eyesight, or the flu. The compromise retained the "substantially limited" language and clarifies that a determination of disability is to be made "without regard to mitigating measures" such as medication or prosthetics.

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