Bolster Commercial Real Estate Lending

CONGRESSIONAL ACTION NEEDED

Take action to bolster liquidity in the commercial and multifamily real estate market to avoid stalling our nation's economic recovery.

CONGRESSIONAL ACTIONS TO DATE

- Representatives Royce (R-CA) and McCarthy (D-NY) introduced H.R. 1418, the "Small Business Lending Enhancement Act of 2011," to increase the member business lending cap from 12.25% to 27.5% of total assets for well-capitalized credit unions. Additionally, Senators Udall (D-CO) and Snowe (R-ME) introduced S. 2231, an identical Senate companion bill. In 2011, both congressional chambers held a hearing on their respective bill.
- In June 2011, the House Financial Services Committee voted to pass H.R. 940, the "United States Covered Bond Act of 2011," sponsored by Representatives Garrett (R-NJ) and Maloney (D-NY). This legislation facilitates the creation of a U.S. covered bond market, which would provide an additional source of commercial real estate lending. A Senate companion bill, S. 1835, has been introduced by Senators Hagan (D-NC) and Corker (R-TN).

WHAT TO TELL YOUR REPRESENTATIVES AND SENATORS

- Pass H.R. 1418 and S. 2231. Credit unions can fill in the commercial real estate lending gap, and help get capital to the struggling small businesses that occupy commercial space.
- Pass H.R. 940 and S. 1835 to create a U.S. covered bond market, which would complement the fragile commercial mortgage-backed securities (CMBS) market by providing an additional new source of capital for the commercial real estate industry.

ISSUE BACKGROUND

Continued economic weakness and uncertainty are contributing to lackluster demand for commercial space, which has resulted in reduced operating incomes, property values and equity—all of which complicate efforts to refinance maturing loans. Approximately $1.6 trillion in commercial real estate mortgages will mature between 2012 and 2016. Currently there is insufficient credit capacity for small businesses and other commercial property owners to refinance this wave of loan maturities, which could result in higher loan defaults and delinquencies—further endangering economic recovery.

Expand Credit Union Small Business Lending

Credit unions are restricted from lending beyond 12.25% of their total assets to member businesses.

Enact Covered Bonds Legislation

Exacerbating the pullback in bank lending, another key source of commercial real estate credit—the CMBS market—is only beginning to recover from near-zero levels in 2009. As this market struggles to rebound, the creation of a covered bond market in the U.S. will be essential to address ongoing commercial real estate refinance challenges. Already successfully used in Europe and Canada, covered bonds allow banks to raise funds by issuing a pool of high-quality assets (typically real estate loans) to investors, which are backed both by the bank's promise to repay and by the assets pledged as collateral. This dual recourse nature is attractive to investors. Therefore, banks who issue bonds have a stake in assuring the long-term viability of the mortgages underlying the bond.

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Preserve the Mission and Purpose of the FHA Program

CONGRESSIONAL ACTION NEEDED

Ensure the Federal Housing Administration (FHA) single-family program has the tools and policies in place to meet its mission of providing access to safe, affordable mortgage financing for qualified borrowers nationwide. Do no harm to the FHA program by advocating initiatives and policies that unfairly burden homebuyers.

CONGRESSIONAL ACTIONS TO DATE

- The House Financial Services Committee has passed H.R. 4264 (Biggert R-IL), the "FHA Emergency Fiscal Solvency Act of 2012," that will provide FHA with additional tools to mitigate risk without overburdening consumers.
- Several Members of Congress have written to the U.S. Department of Housing & Urban Development (HUD) to express concern with FHA's condominium policies that make it very difficult to purchase a condo with FHA financing.

WHAT TO TELL YOUR REPRESENTATIVES AND SENATORS

- Support H.R. 4264, the "FHA Emergency Fiscal Solvency Act of 2012," as it was passed out of committee, which balances the need to improve the fiscal solvency of the FHA fund with costs and availability to consumers.
- Submit comments to HUD opposing the condominium regulations, and expressing concern that qualified homebuyers are being shut out of often the most affordable homeownership option available.

ISSUE BACKGROUND

FHA, like every other holder of mortgage risk, has incurred financial losses as a result of increasing foreclosures. However, FHA has increased premiums in order to compensate for these losses. Congress should NOT impose any additional burdens on consumers. Further mandated increases to premiums or increases to downpayments will disenfranchise FHA borrowers and hurt our housing recovery.

Provide FHA with Tools, but Don't Disqualify Potential Homeowners

NAR supports H.R. 4264, as passed by the House Financial Services Committee. This legislation provides FHA with protections against lenders who make errors of material fact, and creates a structure of oversight. But any amendments that might raise the downpayment requirement, mandate additional premium increases, or otherwise limit qualified FHA borrowers from eligibility will seriously impact our housing recovery.

Ease Burdensome Condominium Regulations

FHA's condominium rules prohibit many borrowers from being able to purchase a home. The new rules place unreasonable burdens on condominium and townhouse communities, rendering them unable to obtain FHA eligibility. FHA has seen a decrease in eligible properties of 41% in the last year. Given that condominiums (and many townhouse developments) are often the most affordable housing option for buyers, these rules are shutting these homeowners out of the market.

Protect Homeownership Tax Benefits

CONGRESSIONAL ACTION NEEDED

Congress must do no harm. The housing market, while improving, is not yet stabilized. More than 20% of all homeowners owe more on their mortgages than the home's current fair market value. The most urgent need is an extension of the tax relief provided in 2007 assuring that individuals in the process of foreclosure, short sales or loan modifications will pay no income tax on forgiven mortgage debt. Over the longer term, during its tax reform debate Congress must not impair the market by making changes to the mortgage interest deduction or the property tax deduction. These longstanding provisions are woven into the fabric of the tax laws.

CONGRESSIONAL ACTIONS TO DATE

Representative Charlie Rangel (D-NY) introduced H.R. 4202, "The Mortgage Cancellation Relief Act of 2012," which would extend the mortgage cancellation relief for two more years, through December 31, 2014. Representative Tom Reed (R-NY) has also introduced H.R. 4336, a similar bill, which would extend it for one year. No further action has been scheduled. The House Ways and Means Committee has held hearings on a range of tax reform issues, but has not had a specific hearing on real estate or housing.

Senator Debbie Stabenow (D-MI) introduced S. 2250, "The Mortgage Relief Act," which also extends the mortgage cancellation relief for two years. No further action has been scheduled. Like the Ways and Means Committee, the Senate Finance Committee held numerous hearings on tax reform, including an October 2011 hearing dedicated solely to housing. NAR provided extensive comments for that hearing.

WHAT TO TELL YOUR REPRESENTATIVES AND SENATORS

- House members should cosponsor H.R. 4336 or H.R. 4202 if they have not yet done so.
- Senators should cosponsor S. 2250 if they have not yet done so.

More time is needed to restore equilibrium in the market. More than 20% of all homeowners currently owe more on their mortgages than the current fair market value of their home.

The extension should be enacted as quickly as possible and well before year-end. Foreclosure and short sale transactions take several months to complete. Both homeowners and lenders need certainty about the tax consequences of these difficult transactions.

The relief provision assures that individuals in foreclosure, short sales and loan modification situations will not have to pay income tax on forgiven debt. Individuals who have experienced what for most will be the greatest economic loss of a lifetime have no cash with which to pay the tax.

Most of the housing dislocation caused by predatory or imprudent loans has worked its way through the system. Today, people seek loan modifications or experience short sales and foreclosures most frequently because of job loss. Struggling families should not be further burdened with additional income taxes.

ISSUE BACKGROUND

Prior to 2007, the tax laws required that any time a lender forgave any part of a mortgage debt, the person responsible for that debt was required to pay income tax at ordinary rates on the forgiven amount. Over the past 60 years, there had never been a time when housing values all over the U.S. collapsed. A collapse occurred in 2007.

Legislation to relieve homeowners of any requirement to pay income tax on forgiven debt was enacted in 2007. Among the limitations to the relief was a provision to assure that tax relief was not extended to cash out refinancing or to very large amounts of debt (more than $2 million). That provision was originally scheduled to expire at the end of 2009, but was extended during the financial crisis so that it would expire at the end of 2012.

Reauthorize the National Flood Insurance Program (NFIP)

CONGRESSIONAL ACTION NEEDED

Reauthorize the National Flood Insurance Program (NFIP) to ensure access to affordable flood insurance.

CONGRESSIONAL ACTIONS TO DATE

- In July 2011, the House voted 406-22 to approve a 5-year reauthorization measure, H.R. 1309, "The Flood Insurance Reform Act," sponsored by Representatives Judy Biggert (R-IL) and Maxine Waters (D-CA).
- The Senate Banking Committee has since unanimously reported a similar bill, S. 1940 (Johnson D-SD; Shelby R-AL), "The Flood Insurance Reform Act," which continues to await full Senate consideration. Forty-one senators recently wrote their leadership urging them to bring up such a measure for debate; forty-one is also the vote margin necessary to end debate on unrelated amendments.

WHAT TO TELL YOUR REPRESENTATIVES AND SENATORS

- Thank your House members for voting for H.R. 1309. Ask your House member to urge the Senate to pass a 5-year flood insurance reauthorization bill before the current temporary extension of the current flood bill expires on May 31.
- Urge your Senator to take up and approve a 5-year reauthorization measure and end the uncertainty of extensions and shutdowns.
- Urge House-Senate conferees to act quickly once a Senate bill is passed.
- Do not let a vital program lapse again or hold it hostage to extensions of other federal programs.

ISSUE BACKGROUND

Millions of American Taxpayers Rely on the NFIP for Flood Protection

Floods claimed more lives and property than any other natural disaster in the U.S. over the last century. Unable to ignore the rising cost to taxpayers of disaster payments for uninsured properties or the lack of a private market for flood insurance, Congress created the NFIP in 1968. That is still true today, except 5.6 million property owners rely on the program in 21,000 communities where flood insurance is required for federally related mortgages.

Stopgap Extensions and Shutdowns Have Exacerbated Market Uncertainty

Since September 2008, Congress has approved more than a dozen NFIP extensions and allowed several lapses. During the June 2010 lapse, 47,000 home sales stalled according to NAR survey data. Further research confirms that another shutdown risks 1,300 more sales each day. Real estate markets require certainty to make the long-term investments that are vital to the U.S. economic recovery.

Reauthorizing the NFIP Saves Taxpayers Both Money and Property

Historically, NFIP has collected enough revenue to cover its cost or pay back a short-term loan from the Treasury with interest. Even with a substantial loan balance remaining from the 2005 hurricane season, reauthorization would not add to the federal deficit according to the Congressional Budget Office. Yet, extending program requirements would strengthen more properties against floods, averting $16 billion in loss already. Without the NFIP, there would simply be more uninsured properties, taxpayers would still be "on the hook" for disaster assistance to these properties, and there would be no premiums to pay down any remaining loan balance or collect interest.

Floods Are a National Problem Requiring a National Solution

Floods are not just a coastal issue. Flood disasters have been declared in every state—along rivers, where snow melted or rain fell. Historic claims data shows the top 3 states contributing the most net revenue to NFIP coffers were on the Gulf; the top 3 with the most NFIP net loss years were in the Midwest.

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Secure the Future of Homeownership

CONGRESSIONAL ACTION NEEDED

Take action to improve the short sales process, support the independence and integrity of appraisals, enact comprehensive reform of the government-sponsored enterprises (Fannie Mae and Freddie Mac), and have regulators establish Qualified Residential Mortgage (QRM) and Qualified Mortgage (QM) rules that allow reasonable access to credit for home buying consumers.

CONGRESSIONAL ACTIONS TO DATE

During the first session of the 112th Congress, the House Financial Services and Senate Banking Committees held numerous hearings on the housing market, primarily focusing on foreclosure/loss mitigation and the state of the nation's housing. Year-to-date, the House Financial Services Committee has not held any hearings on GSE reform, appraisals, short sales or QRM/QM; the Senate Banking, Housing and Urban Affairs Committee has held only one two-part hearing on the state of the nation's housing. NAR expects that with a renewed focus by the Administration and Congress on housing concerns that additional hearings on all three issues will be initiated and that NAR will be a primary participant.

WHAT TO TELL YOUR REPRESENTATIVES AND SENATORS

- Reform of the secondary mortgage market should be comprehensive, and the federal government must have a continued key role in the secondary mortgage market in order to ensure that there is capital for mortgage lending in all mortgage markets under all market conditions.
- NAR would like a hearing on H.R. 1498 (Rooney R-FL; Andrews D-NJ) or S. 2120 (Murkowski R-AK; Brown R-MA; Brown D-OH). This legislation requires servicers to decide whether to approve a short sale within a specified time frame of completion of the short sale request.
- Support increased educational standards for appraisers, and support state regulation of ALL appraisers, regardless of their source.
- Congress should insist that the Regulators put forth broad QRM and QM rules that maximize access to reasonable and safe credit for borrowers as Congress intended.

ISSUE BACKGROUND

Comprehensive Restructuring of the GSEs is Required

The GSEs, though they have been in conservatorship for more than 3 years, remain critical to ensuring mortgage market liquidity. Removal of the GSEs, without a viable replacement for their secondary mortgage market mission, will mean severely restricted mortgage capital and higher costs for qualified, creditworthy borrowers.

Expedited Decisions by Lenders/Servicers on Shorts Sales Required

The short sale process still takes many months and countless hours and often requires remarketing because buyers lose patience and terminate the contract. Streamlining short sales will reduce the amount of time it takes to sell the property, improve the likelihood the transaction will close, and reduce the number of foreclosures.

Maintenance of Appraisal Independence and Integrity

Appraisals continue to be a source of frustration for consumers trying to purchase a home. Geographic competency is the most often cited concern. Overall competency is also an issue, as experienced appraisers leave the market. Regulation of Appraisal Management Companies (AMCs) differs based on the ownership of the AMC. This creates confusion and leads to different standards.

Establish QRM/QM Rules that Maximize Consumer Access to Credit

The impact of the proposed narrow definition of QRM would be to curtail the ability of creditworthy households from obtaining mortgages to purchase a home. Focusing the QRM exemption on underwriting factors that do not significantly improve loan performance (e.g., a mandatory high percent down level, 20%) means millions of families will fail to qualify for a QRM mortgage and will have to pay higher rates and fees for a mortgage, if they are even able to qualify.