

LEGISLATIVE ISSUES

NATIONAL ASSOCIATION OF HOME BUILDERS



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ISSUE: Banking and Mortgage Finance

CATEGORY: Government-Sponsored Enterprises (GSEs) Regulation

Policy makers are still attempting to resolve the issue of the appropriate regulatory framework for the housing government-sponsored enterprises (GSEs) Fannie Mae, Freddie Mac and the Federal Home Loan Banks (FHLBanks). The GSEs were created by Congress to reduce the cost of housing credit and improve affordable homeownership and rental housing opportunities.

Background

The Government Sponsored Enterprises (GSEs)—Fannie Mae, Freddie Mac and the Federal Home Loan Banks—are integral components of the nation’s housing finance system. Congress accorded a special status to the GSEs to enable them to provide liquidity to the housing finance system. However, following disclosure of accounting problems at Freddie Mac in the summer of 2003, Congress initiated a review of the regulation of the GSEs. After similar accounting issues arose at Fannie Mae in 2004, the two housing finance entities have come under increased congressional scrutiny.

NAHB supports congressional efforts to strengthen the financial safety and soundness and the housing mission regulation of the GSEs. The building industry believes oversight of these two areas must be balanced. Unfortunately, there are many who would like to take this opportunity to diminish or eliminate the advantages of the GSEs, treating them more as banking organizations.

Legislation reforming the regulatory oversight of the housing GSEs was considered by the Republican-led 109th congress but ultimately died due to policy differences between the House and Senate reform packages. NAHB supported the House-passed bill in the 109th Congress, H.R. 1461, which was a balanced bill that included many of NAHB’s priorities in key areas and did not include several adverse provisions sought by those seeking to restrict GSE activities. In contrast, the Senate bill, S. 190, contained many restrictive provisions that could harm the nation’s housing finance system, including restrictions on asset holdings, discretion to raise minimum capital, burdensome program approval process, and a regulatory structure tilted away from housing. In addition, S. 190 did not require Fannie Mae and Freddie Mac to set aside profits to fund affordable housing initiatives, as provided in the House-passed bill. Debate on GSE reform is expected to resume in the 110th Democrat-led congress.

Update

With Democrats taking over the majority in both the House and Senate the dynamic for consensus on GSE reform has changed significantly. The new Chairman of the House Financial Services Committee, Rep. Barney Frank (D-MA), has indicated that he will move legislation in 2007 that looks very much like what the House passed in the 109th Congress. Discussions between Representative Frank and the Treasury Department in late 2006 that fueled a last-minute attempt to negotiate a compromise on GSE reform are expected to provide a framework for legislation in the 110th Congress.

ISSUE: Health Care

CATEGORY: Association Health Plans (AHPs)

Under current law, association health plans (AHPs) – group health plans offered by trade and other associations – are not exempt from state laws and mandates. In order to offer health insurance, they must offer each state’s individual list of mandates, making the administrative costs of offering plans prohibitive for most associations. Legislation proposed in Congress would allow associations to pool their memberships across state lines in order to negotiate for and obtain access to uniform health insurance plans. This legislation would give association members the same economies of scale and bargaining power to negotiate discounts and administrative savings for health plans that large companies and unions currently enjoy.

Background

In the 109th Congress, the House reintroduced Association Health Plan (AHP) legislation, H.R. 525, the *Small Business Health Fairness Act* in February 2005, passing the legislation on July 16, 2005 by a vote of 263-165, with 36 Democrats supporting the bill. AHPs also continue to receive a strong endorsement from President Bush, who again called for enactment of the legislation in his State of the Union Address on February 2 by urging the Senate to take action this year. On February 16, 2005, several Senators introduced companion legislation, S. 406, the *Small Business Health Fairness Act*. However, strong opposition to the legislation by the Blue Cross/Blue Shield Association, the State Health Insurance Commissioners, and the Governors meant that the Senate would not be able to consider the AHP plan.

As a result of pressure to consider legislation from the president and Majority Leader Bill Frist, Health, Education, Labor and Pensions Committee Chairman Mike Enzi (R-WY) crafted a compromise bill that tried to bring together the viewpoints of the insurers, state regulators and associations. The resulting bill, S. 1955, the *Health Insurance Marketplace Modernization Act*, creates “small business health plans” (SBHPs), which would allow associations to pool their members for insurance purposes. However, the legislation’s method for creating the plans differs greatly from the method contained in the House legislation. It also provides a way for insurers to circumvent associations entirely in offering tailored plans directly to association members. Traditionally, Democrats have not been supportive of either the original AHP legislation, or the Enzi version.

Update

With the new Democrat majorities in the House and Senate, it is unlikely that Association Health Plan legislation will receive much support, and there is probably no hope that it will receive votes in either the House or Senate during the 110th Congress. Democrats are expected to focus on other health care issues including changes to the Medicare Prescription Drug plan, and a possible look into whether the 46 million uninsured could be added to the federal government employees’ health plan (something that would come with a multi-billion dollar price tag). Efforts will continue to be underway to add AHP-like provisions to the Democrats’ health care agenda, though it is unlikely that they will receive much support.

ISSUE: Labor Shortage
CATEGORY: Apprenticeship Training

Apprenticeship training is the traditional system of training and advancement in an occupation. Apprenticeship training programs currently provide job training for over 400,000 registered apprentices and are operated on a voluntary basis by employers, employer associations or joint management and labor organizations that design, organize, manage and finance registered apprenticeship programs.

Background

The U.S. Department of Labor sets minimum national training standards, and the Office of Apprenticeship, Training, Employer, and Labor Services (ATELS) and its state bureau of Apprenticeship Training (BAT) offices are responsible for registering apprenticeship programs that meet these federal standards in 23 states. In the other 27 states, the District of Columbia, the Virgin Islands and Puerto Rico, ATELS/BATs oversee federally recognized State Apprenticeship Councils (SACs) or Agencies, which perform the same functions. Currently, there are registered apprenticeship programs in more than 800 occupational fields, including all of the construction trades. Employers typically invest between \$25,000 and \$50,000 per employee per year in an apprenticeship program. First-year apprentices generally receive 50 percent of the wage earned by an average journey-level worker employed in their trade. Generally, apprenticeship programs in BAT and SAC states that meet federal requirements are approved and registered. However, they are not required to act on a program application within a uniform specified time frame. In addition, the BAT and SACs are not required to provide written approvals and denials based on legal grounds. And, finally, there is no clear path for administrative or judicial review to appeal a denial by the BATs or SACs.

Because a great deal of time, financial resources and commitment go into developing apprenticeship programs, many industry groups are interested in bringing accountability into the registration process. In the 109th Congress, Representative Roger Wicker (R-MS) reintroduced the *Apprenticeship Enhancement Act*, H.R. 3613, which he previously introduced in the 108th Congress. The bill would require apprenticeship programs to be processed in a fair and timely manner. The bill amends the National Apprenticeship Act of 1937, (a.k.a., the Fitzgerald Act), to establish a specified time frame for the ATELS to process apprenticeship program applications; written decisions for the approval or denial of programs; and a clear path for administrative or judicial review.

Update

It is unlikely that this issue will receive any attention from the new Democrat governing majorities in Congress, because of strong union opposition to opening up opportunities for groups other than unions to sponsor apprenticeship programs.

ISSUE: Labor Shortage
CATEGORY: Immigration Reform

Historically, residential construction has been an industry where low-wage earners can progress from entry-level positions to long-term careers. The number of U.S.-born young people who enter the industry continues to diminish as trends in secondary occupational education favor employment in the high-tech or service industries. Many home builders find themselves without enough applicants to fill open jobs. According to the Bureau of Labor Statistics, 240,000 new workers are required by the industry each year to meet consumer demand for housing.

Background

Presently, it is estimated that over 20% of the construction workforce is foreign-born. Because foreign born workers are making an increasingly important contribution to the industry, NAHB supports streamlining current immigration programs and/or creating new employment-based programs for foreign-born workers.

During the 109th Congress, several bills were introduced to address immigration reform. The House considered H.R. 4437, the *Border Protection, Antiterrorism and Illegal Immigration Control Act*, in December, 2005, passing it by a vote of 239-182. The legislation mandates that employers verify the status of all current and future employees under a phased-in implementation period with stringent penalties. The legislation does not address a legal guest worker program, which is supported by NAHB. H.R. 4437 does include a provision that provides a safe harbor for contractors if their subcontractor hires an unauthorized alien. In May, the Senate considered S. 2611, the *Comprehensive Immigration Reform Act*, which included provisions address border security, employer enforcement, a temporary worker program, and a program to address the estimated 11-12 million illegal immigrants currently in the United States. NAHB supported the Senate-passed bill, however, the major differences between the House and Senate approaches to the legislation meant that the two versions were never conferenced and a final version was never completed.

Update

NAHB expects that the Democrats will move forward with new immigration reform legislation early in the 110th Congress. The new legislation will focus heavily on employer enforcement, and will include provisions addressing illegal immigrants. Inclusion of a new temporary worker program may be more controversial. NAHB will be working with lawmakers as they craft new legislation in order to address ongoing issues like the treatment of the contractor/subcontractor relationship. The White House remains committed to finding a solution to the immigration issue and has indicated that the president will address the topic again during his State of the Union Address at the end of January.

ISSUE: Appropriations

CATEGORY: Appropriations

NAHB has significant interest in the federal appropriations process and bills, with most of the focus being on the key housing programs that are sponsored and funded by the federal government. Additionally, NAHB monitors and lobbies on several key appropriations issues that impact the Home Builders Institute (HBI) and the NAHB Research Center (NAHBRC). NAHB focuses primarily on three major appropriations bills: the VA/HUD appropriations bill, the Labor/HHS/Education appropriations bill, and the Agriculture appropriations bill.

Background

Within VA/HUD there are several programs including the HOME program, CDBG formula grants, the Section 8 program, HOPE VI, Rural Housing and Economic Development, Housing Counseling Assistance, and Brownfields Redevelopment. In addition, NAHB lobbies when necessary on various programs under the Environmental Protection Agency, and lobbies heavily on the PATH program on behalf of NAHBRC.

Within the Labor/HHS/Education appropriations bill, NAHB works to identify opportunities to highlight the work done by HBI in its ProjectCRAFT and Job Corps programs, and lobbies extensively on Job Corps, Workforce Investment Act, and Carl D. Perkins Vocation Education programs. In addition, NAHB monitors funding for programs and enforcement under the Occupational Safety and Health Administration, and apprenticeship programs.

Within the Agriculture bill, NAHB monitors several programs under the Rural House Service, including: Section 502 direct and guaranteed loans, the Section 515 rental housing direct loan program, the Section 538 rental housing guarantees program, and Section 521 rental assistance.

On an as-needed basis, NAHB also lobbies on other appropriations bills, including monitoring the Edward Byrne grant program under Commerce/Justice/State appropriations on behalf of HBI.

Update

The 109th Congress was unable to complete consideration of all of the FY2007 appropriations bills—finishing only the Defense and Homeland Security appropriations bills prior to their *sine die* adjournment in December. Because of their inability to complete the bills, final consideration will now be controlled by the incoming Democrat majorities in the House and Senate. In late December, the incoming Appropriations Committee Chairmen—Rep. David Obey (D-WI) and Sen. Robert Byrd (D-WV)—announced that they would not consider the FY2007 bills, and would instead pass a Continuing Resolution (CR) to keep the government operating at the FY2006 levels for the remainder of 2007. This move will allow them to focus more directly on the FY2008 appropriations process, which will kick off with release of the president's budget on February 5, 2007.

ISSUE: Trade
CATEGORY: Canadian Lumber

Canadian lumber imports are the source of more than a third of the lumber used in U.S. home building. Trade restrictions on lumber cause artificial price increases and volatile swings in the lumber market, both of which hurt housing affordability. NAHB seeks free trade in lumber and opposes any border measures, such as tariffs, quotas, or export fees.

Background

On May 2, 2002, the U.S. International Trade Commission (ITC) voted 4-0 to confirm a 27 percent tariff on imported Canadian softwood lumber. The ITC finding of a “threat of injury” to domestic lumber producers resulted in anti-dumping and countervailing duties imposed on Canada. Canada has appealed the tariff to North American Free Trade Agreement (NAFTA) and World Trade Organization (WTO) panels, and has achieved a number of significant legal victories. In August, 2004, a NAFTA panel issued a final ruling that stated that the ITC did not make the case that the U.S. industry was threatened with injury by Canadian imports. The U.S. appealed the ruling to an “extraordinary challenge” committee. Despite a unanimous ruling on August 10, 2005 by the NAFTA Extraordinary Challenge Committee affirming that the CVD and AD tariffs were invalid, the U.S. government refused to remove the 10 percent duties on Canadian lumber or to refund the billions of dollars in duties collected since 2002. Canada went to the U.S. Court of International Trade in its effort to have the NAFTA decision implemented.

However, with the U.S. refusing to comply with the court rulings, and threatening to continue to drag out the legal appeals and proceedings for years to come, Canada finally bowed to pressure from the United States and U.S. lumber producers, agreeing to a negotiated settlement to the dispute in July, 2006. The settlement signed officially on September 12, 2006. Under the deal, shipments of lumber from Canada to the US would be restricted and/or taxed when lumber prices are low, raising prices during weak markets and possibly disrupting supplies.

The deal sets a trigger of \$355 per thousand board feet. As prices fall below that trigger, an export tax and quota limitations would be implemented. At prices below \$315 per thousand, the most stringent fees and quotas would be imposed. Provinces would be subject to either export fees of 15%, or to quotas *plus* fees of 5%. Under terms of the agreement, this mechanism will be in place until 2013, but could be extended to 2015.

Update

With the agreement now in place, NAHB continues to monitor lumber pricing and supply as we wait for the full impacts to be realized. NAHB continues to have concerns that as the U.S. housing market improves over 2007-2008, the U.S.-Canadian lumber agreement will begin to create more uncertainty and volatility in the marketplace. In an effort to expand opportunities for builders to obtain a stable and affordable supply of framing lumber, NAHB has begun meeting with lumber interests in Sweden and Russia to discuss the future of European/Russian lumber supply in the U.S.

ISSUE: Environment

CATEGORY: Endangered Species Reauthorization

The Endangered Species Act (ESA) makes it illegal for anyone to "take" a fish or wildlife species listed by the U.S. Fish and Wildlife Service (FWS) as threatened or endangered. Builders, developers, and other private property owners seeking to comply with the ESA and its requirements have often encountered regulations that do not contain sufficient scientific data, as well as improper and unreasonable habitat conservation and recovery plans to deal with listed species. Inter-agency jurisdictional disagreements and differing interpretations are even further sources of unnecessary delay to the development of private property, thus decreasing housing affordability.

Background

With NAHB's full support, in September, 2005, the House of Representatives passed H.R. 3824, the *Threatened and Endangered Species Recovery Act (TESRA)*, by a vote of 229 to 193. H.R. 3824 fundamentally changes the ESA and will begin to focus the ESA on actually recovering species, something the ESA has failed to do with any great success.

For NAHB's members, TESRA's major benefit is the elimination of the overly burdensome and litigation prone critical habitat provisions from the ESA. Additionally, TESRA: Increases protection of private property rights and includes compensation provisions for property takings; codifies "no surprises" for HCPs; requires minimum scientific standards to be set for ESA actions and decisions, including requiring that the science meet the standards of the "Data Quality" guidelines; and ensures recovery plans are consistent with local comprehensive plans. Importantly, H.R. 3824 also states that "nothing in a recovery plan shall be construed to establish regulatory requirements." This is a critical component of the bill that will ensure that the case law pertaining to the discretionary nature of recovery plans is codified.

House Resources Committee Chairman Richard Pombo (R-CA) and Congressman Dennis Cardoza (D-CA) were the chief sponsors of TESRA. Representative Greg Walden (R-OR) was also important in moving the bill forward.

Update

In the Senate, Senator Jim Inhofe (R-OK), Chairman of the Environment and Public Works Committee, Senator Jim Jeffords (I-VT), Ranking Member, and Fisheries, Wildlife and Water Subcommittee Chairman Lincoln Chafee (R-RI) and Ranking Member Hillary Clinton (D-NY) made an attempt to develop a bipartisan ESA reform bill. Unfortunately, the political dynamics of the issue and the election season prevented them from reaching a compromise that could move in the Senate. With Democrats now in control of the House and Senate, NAHB will have to assume a defensive posture in order to prevent further tightening of ESA restrictions. Finally, NAHB lost its chief ally in Rep. Richard Pombo, who lost his bid for re-election in November.

ISSUE: Environment

CATEGORY: Clean Water Act Reform (Wetlands Strategy)

The Clean Water Act (CWA) grants Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) statutory jurisdiction over the nation's "navigable waters," which they have defined as "the waters of the U.S." Section 404 of the act prohibits the "discharge of dredged and fill material" into "waters of the U.S.," including wetlands, without a permit. The Corps identifies and delineates wetlands for purposes of Section 404 permitting, including indicators of wetland vegetation, soils, and hydrology. A consistent approach to determining which wetlands are under federal jurisdiction has been problematic.

Background

In 1972, Congress passed the Federal Water Pollution Control Act Amendments, which, after subsequent amendments, became known as the Clean Water Act (CWA). The CWA forms the current framework for federal regulation of water pollution. Section 301(a) of the CWA prohibits the discharge of pollutants into "navigable waters," except in compliance with permits issued by the federal government or a qualifying state agency. The CWA defines "navigable waters" as "the waters of the United States, including the territorial seas." One exception to the discharge prohibition is found in section 404 of the CWA. Section 404 authorizes the U.S. Army Corps of Engineers to issue permits for the "discharge of dredged or fill material into the navigable waters at specified disposal sites." The EPA oversees the Corps. Unfortunately, the Corps and the EPA frequently exceed the congressional intent of the CWA by requiring NAHB's members to apply for and obtain Section 404 permits where no statutory "navigable water" exists.

To complicate matters, jurisdictional determinations regarding whether a particular aquatic resource is "navigable water" vary wildly from Corps district to Corps district. In fact, one Corps' field officer may deem an aquatic resource jurisdictional, while another field officer in the same Corps district may decide that the same resource falls outside the jurisdiction of the CWA. In light of these issues, NAHB believes that the Agencies must move ahead with a rulemaking on CWA jurisdictional issues. Unfortunately, the Agencies recently have decided against this course of action and abandoned their effort to draft a rule on CWA jurisdictional issues. The result of this unfortunate decision is that litigation will continue to determine the CWA's reach.

Update

While there was no movement on wetlands legislation in the 109th Congress, the recent Supreme Court decision in the *Rapanos* case did cause Congress to take a look at the current state of wetlands regulation in the U.S. NAHB staff worked closely with the Senate Environment and Public Works Committee to respond to the *Rapanos* decision and subsequent hearing on the issue. With Democrats now in control of the House and Senate, there is an excellent chance that legislation authored Rep. Jim Oberstar (D-MN) and Sen. Russ Feingold (D-WI) to greatly expand federal jurisdiction of wetlands will be re-introduced and possibly passed in the 110th Congress. NAHB will have to expend a lot of staff and financial resources to prevent these bills from becoming law.

ISSUE: Environment

CATEGORY: Clean Water Act Reform

EPA's storm water permitting requirements, which require construction site operators to obtain permit coverage when storm water leaves the site, have been in place since 1992, first for "large construction sites," defined as disturbing 5 or more acres of land or less than 5 acres in a common plan of development or sale. In 2003, Phase II of EPA's storm water regulations took effect for sites disturbing one to five acres, or less than one acre in a common plan of development or sale. To obtain coverage under a construction general permit, the applicant must prepare a Storm Water Pollution Prevention Plan (SWPPP) and file a Notice of Intent (NOI) with EPA or the state permitting agency.

Background

Storm Water Phase II

On December 8, 1999, the Environmental Protection Agency (EPA) finalized the Storm Water Phase II regulations that lowered the threshold for a storm water permit to one acre. The regulation calls for construction projects, disturbing between one and five acres, to obtain permit coverage. As with the Phase I Storm Water Permit regulation, operators of construction sites can apply for coverage under a general permit by submitting a Notice of Intent and developing and implementing a Storm Water Pollution Prevention Plan with appropriate Best Management Practices to minimize the discharge of pollutants from the site prior to initiating a construction project.

Update

During the 109th Congress, NAHB has been encouraging members of Congress to put political pressure on the EPA to reform the storm water permitting process. During the first part of 2006, NAHB staff and members of the NAHB High Production Home Builders Council developed a federal storm water reform bill. This effort followed a series of bi-partisan meetings with the staff of the Water Resources Subcommittee and the Senate Environment and Public Works Committee. The bill reduces duplicative permitting procedures, encourages and enhances compliance and limits the EPA's ability to bring enforcement actions in those states which have assumed the storm water program. On June 8, 2006, Rep. Jimmy Duncan (R-TN), Chairman of the House Water Resources Subcommittee, introduced H.R. 5558, the *Stormwater Enforcement and Permitting Act*. NAHB was able to obtain seventy bipartisan cosponsors prior to the end of the 109th Congress.

In the fall, NAHB worked with Senate Environment and Public Works Committee Chairman Jim Inhofe (R-OK) and committee member Sen. Tom Carper (D-DE) to craft a companion bill for introduction in the Senate. After months of negotiations, NAHB and Senators Inhofe and Carper were able to craft a compromise, S. 4101, which was introduced on December 12, 2006, prior to the adjournment of the 109th Congress. We anticipate that both bills will be introduced in the 110th Congress. Even with the bipartisan nature of the bills' co-sponsorship, the Democratically-controlled House and Senate have significantly dimmed the prospects for passage of the legislation this year. However, NAHB will continue to push for passage in the new dynamic on Capitol Hill.

ISSUE: Environment

CATEGORY: Mold

NAHB believes that regulatory and legislative efforts to address mold in residential dwellings should be based on sound science and research. Any regulatory or legislative action should address regional flexibility, cost-effectiveness, technical achievability, and attainability. Any mold-related disclosure requirements in the sale of homes and/or the lease of rental units should not expose sellers and lessors to unpredictable and unreasonable liability.

Background

Representative John Conyers (D-MI) will likely reintroduce his comprehensive mold legislation, H.R. 1269, the *United States Toxic Mold Safety and Protection Act of 2005*. The bill would mandate that EPA establish standards for mold inspection, remediation, testing and the design, installation and maintenance of air ventilation and air-conditioning systems. The bill also would have HUD issue guidelines identifying conditions during construction that encourage mold growth and recommend appropriate means of eliminating those conditions. NAHB has serious concerns with this bill.

Also, in May, 2004 the National Academies of Science completed its long-awaited study on indoor mold and health. As we expected, the report, which surveyed existing medical science, showed that there is no direct link to indoor mold and serious illness, such as cancer or brain damage, as some lawsuits have alleged. The report did conclude that mold can exacerbate existing allergies to mold and that more research is needed before any further conclusions can be drawn on health effects. .

Update

Rep. John Conyers (D-MI), who has long served as the ranking member on the Judiciary Committee, will take over next year as chairman. This position would certainly provide him an opportunity to highlight his mold legislation, and there is a strong possibility that he will hold hearings on the bill. Although the Judiciary Committee only has limited jurisdiction over mold, mainly related to liability issues, the Energy and Commerce Committee, which has jurisdiction over indoor air quality issues, is chaired by Rep. John Dingell (D-MI). If motivated to cooperate, this two long-serving Michigan democrats could begin to really focus on mold and indoor air-quality issues. This could be a significant concern for NAHB. NAHB will continue to monitor the legislation, work with industry stakeholders and act according to NAHB mold policy.

ISSUE: Land Development

CATEGORY: Smart Growth

NAHB has long held the core principle that land use decisions are reserved, by the U.S. Constitution, for local governments. However, over the past several Congresses, there has been an increasing trend by federal legislators to address the smart growth issue. Unfortunately, these measures oftentimes fail to recognize the importance of local land use planning and the need for affordable land (and affordable housing) to accommodate future growth.

Background

More and more, senators and members of Congress are hearing from constituents about traffic congestion, “ugly” development, loss of farmland and “sprawl.” These measures oftentimes fail to recognize the importance of local land use planning and the need for affordable land (and affordable housing) to accommodate future growth. NAHB expects to see an increase in legislation to restrict development, as these bills have become politically popular.

Update

Last summer, Senators Harry Reid (D-NV) and John Ensign (R-NV) introduced the White Pine County Conservation, Recreation, and Development Act (S. 3772). This bill would have, among other things, amended current federal law regarding the sale of additional federal land around Las Vegas by mandating that when 200 or more acres of federal land is sold, five percent of any housing developed on that land must be set aside as affordable (applies only to the Las Vegas area). NAHB, together with the Southern Nevada HBA, worked closely to fight this inclusionary zoning provision. On the final day of the 109th Congress, Senator Reid was able to attach S. 3772 to a tax bill that was destined to pass into law. Fortunately, due to the controversy to the affordable housing section that NAHB and SNHBA created, Senator Reid removed from the inclusionary zoning mandate from the bill, which was later signed into law.

However, with Senator Reid taking over as majority leader in the Senate, and with the House democrats looking for legislative victories that will help their vulnerable suburban members, it may prove more difficult to amend or stop these types of bills in the 110th Congress.

ISSUE: Civil Justice Reform

CATEGORY: Tort Reform

NAHB believes that state and local laws should contain the necessary protections to reduce the incidence of litigation between builders and consumers. In recent years, tort reform has become a much more prominent issue in Congress. By some accounts, small businesses alone pay \$88 billion a year to cover the costs of our tort system. Additionally, more builders are being pulled into class action suits between consumers and product manufactures.

Background

Until recently when the *Class Action Fairness Act* was signed into law, savvy lawyers have been able to take advantage of our legal system by bringing class action lawsuits in state courts where decisions tend to be biased towards the plaintiffs and awards are high. This technique is known as forum shopping, and certain state courts have become magnets for class action cases. Because class action cases usually were heard in these sympathetic state courts, defendants, fearful of losing the case and of paying large damage awards, were likely to settle out of court rather than risk a trial. This meant most class action cases were settled before a court even heard the merits of the case. Such a system does little to protect the consumer or the defendants. Observers of the class action system are now closely watching to see how effective the *Class Action Fairness Act* is at limiting these abuses.

Update

NAHB does not expect either the House or Senate to take up additional legal reform legislation in the 110th Congress.

ISSUE: Land Development

CATEGORY: Access to Federal Court

NAHB believes property owners should be compensated for reductions in the value of their property caused by government regulation and should have faster and easier access to federal courts. Judicial reforms are needed so that landowners can defend their Constitutional guarantee of compensation from the government.

Background

If governmental actions deny you the use of your land or otherwise devalue your property, you may have a Fifth Amendment takings claim, and the government may need to compensate you for that taking. Unfortunately, the federal courts have created artificial barriers for property owners seeking just compensation from a regulatory taking—this means that government agencies are free to violate our Fifth Amendment protections with little fear that property owners will take legal action in response.

In 2005, the Supreme Court released a ruling in *San Remo Hotel v. San Francisco* that effectively prevents property owners from having their Fifth Amendment takings cases heard in federal court. Property owners with a takings claim now face an untenable paradox. Under the current legal system, before a federal court will rule on a Fifth Amendment takings claim, property owners must first litigate their case in state court. However, bringing the case to state court and having a takings claim heard (even under state law) often precludes the property owner from review by the federal courts. In contrast, all other civil rights cases can be brought directly to federal court.

Last year, Rep. Steve Chabot (R-OH) and Rep. Bart Gordon (D-TN) introduced the *Private Property Rights Implementation Act* (H.R. 4772) to allow property owners with a Fifth Amendment takings claim access to federal court. H.R. 4772 would allow a property owner to file a Fifth Amendment takings claim directly in federal court. NAHB strongly supported the bill, which eventually passed the House on September 29 by a vote of 234 to 172. Unfortunately, the legislation was not considered in the Senate.

Update

Even with the renewed attention on property rights resulting from recent Supreme Court decisions, the past realities of the make up of the Congress continue to be a hurdle to successfully pursuing our goals in the legislative arena. Rep. John Conyers (D-MI), who has long served as the ranking member on the Committee, took over as chairman of the House Judiciary Committee, while Senator Patrick Leahy now chairs the Senate Judiciary Committee. Both are staunch opponents of NAHB's private property rights legislation, effectively ending any chance of revisiting the issue.

ISSUE: Land Development

CATEGORY: Eminent Domain

NAHB opposes abuse of eminent domain, but strongly supports the traditional uses of eminent domain, such as for public utilities, roads, schools, and the removal of blighted properties.

Background

In 2005, the U.S. Supreme Court ruled in *Kelo v. City of New London* that government entities, if permitted by state law, can condemn any property in the name of “economic development.” The *Kelo* decision touched a nerve in Congress and resulted in a flurry of legislative activity. Legislation was introduced in both the House and Senate to deny federal development funds to state or local governments if they take property based on the *Kelo* decision.

On November 3, 2005, the House passed H.R. 4128 by a bipartisan vote of 376 to 38. H.R. 4128 prohibits states and local governments who receive federal economic development funding from using eminent domain for economic development. The bill would allow a property owner, whose land is taken through eminent domain, to challenge the government’s actions in court if the property owner believes the motivation for taking the land was economic development.

H.R. 4128 does continue to allow eminent domain to be used for “traditional” public uses, such as roads, schools, utilities, and government buildings. It also attempts to protect the right of government to use eminent domain to “remove harmful uses of land provided such uses constitute an immediate threat to public health and safety,” which is intended to mean blighted areas. The Senate Judiciary Committee, however never took up H.R. 4128 before the 109th Congress.

Update

It is possible that the House will once again take up anti-Kelo legislation in the 110th Congress. One of the major backers of H.R. 4128 was Rep. John Conyers (D-MI), who is now chairman of the House Judiciary Committee. On the other hand, with over 30 states passing legislation to prohibit or restrict the use of eminent domain for economic development, it is unclear if Congress will want to preempt those efforts by passing a far-reaching anti-Kelo bill. NAHB will continue to monitor this issue.

In addition to free-standing legislation in the House and Senate, in 2005, Senator Kit Bond (R-MO) offered an amendment to the Fiscal Year (FY) 2006 Transportation, Treasury, and HUD (T-THUD) appropriations bill (H.R. 3058) to deny the use of federal funds for any project that uses the U.S. Supreme Court’s *Kelo* decision to condemn property. The provision was signed into law, and the amendment’s prohibitions remain in effect under the temporary Continuing Resolutions passed by Congress to keep the government funded. Although the 109th Congress was unable to complete consideration of the FY2007 T-THUD bill, the incoming

Appropriations Committee Chairmen—Rep. David Obey (D-WI) and Sen. Robert Byrd (D-WV)—would instead pass a Continuing Resolution (CR) to keep the government operating through the end of FY2007. This action would keep the Bond Amendment’s prohibition in effect through September 30, 2007.

ISSUE: Tax
CATEGORY: Reducing the Estate Tax

Prior to 2001, the top estate tax rate was 55%, with some taxpayers paying a 60% marginal rate. As a result of the Economic Growth and Tax Relief Reconciliation Act (EGTRRA) of 2001, the federal estate tax gradually phases-out between now and 2010. However, in 2011, the estate tax returns, in full force, to the levels that were in law prior to the 2001 law (\$1 million exemption and a 55% tax rate). Because of the graduated phase out of the tax and the eventual return of the full tax in 2011, estate planning has become a difficult process. The enactment of permanent Estate Tax repeal legislation will enable individuals to have the freedom to plan their estates with certainty in the law.

Background

In 2010, the estate tax is repealed and no tax is assessed on an estate's heirs unless the heirs sell the assets. Upon sale, the assets would be subject to a capital gains tax rate of 20% or 25% for recaptured depreciation. Also, in 2010, the current full fair market step up in basis is eliminated for those estates that benefit from the estate tax repeal. Until then, the full fair market basis is still maintained. As a result, until the estate tax repeal becomes effective, all estates would be subject to a carry-over basis, which is equal to the basis that the decedent had in the assets prior to death. EGTRRA provides a partial step up in basis of \$1.3 million in assets transferred upon death and an additional \$3 million in assets for a surviving spouse. Therefore, the basis of assets transferred to a surviving spouse could be increased by a total of \$4.3 million in assets without being subject to any capital gains taxes, adjusted annually for inflation.

In the 108th Congress, the House passed a bill to permanently repeal the estate tax, but the legislation was not considered in the Senate. In the 109th Congress, Rep. Kenny Hulshof (R-MO) and Bud Cramer (D-AL) introduced H.R. 8, the *Death Tax Repeal Permanency Act of 2005*. The House passed the bill in April 2005 by a vote of 272-162. In the Senate, Senators Jon Kyl (R-AZ) and Bill Nelson (D-FL) introduced companion legislation, S. 420. During the second session of the 109th Congress, there were several attempts to pass either full repeal of the estate tax or significant reform, none with success.

Update

With Democrats now in control of the House and Senate, it is unlikely that estate tax reform will be a high legislative priority. However, there are some indications that Chairman Charlie Rangel (D-NY) of the House Ways and Means Committee may be interested in a modest reform proposal. Incoming Senate Finance Committee Chairman Max Baucus (D-MT) has publicly expressed support for estate tax reform in the past, but it remains to be seen whether he would support compromise legislation in the 110th Congress.

ISSUE: Tax
CATEGORY: Exit Tax Relief

Prior to the creation of the Low Income Housing Tax Credit in 1986, the federal government encouraged capital to be raised from individuals for investment in federally-assisted housing by providing more rapid depreciation deductions for their investments. Today those investments carry low or negative basis in their partnership interests that would trigger large depreciation recapture tax obligations (“exit taxes”) if the property were transferred. As a result, most investors choose to hold on to their investment until the property is passed to their heirs and the negative basis is eliminated by the stepped-up basis rule. As a result, hundreds of thousands of affordable housing units are deteriorating without the investment needed to preserve the property.

Background

Two exit tax bills were introduced in the 109th Congress. In the House H.R. 3715 - the *Affordable Housing Preservation Tax Relief Act*” was introduced by Representatives Jim Ramstad (R-MN) and Benjamin Cardin (D-MD). Companion legislation – H.R. 3616 – was introduced in the Senate by Gordon Smith (R-OR) and Charles Schumer (D-NY). The goal of the legislation is to preserve the stock of federally-assisted affordable housing at minimal revenue cost to the federal government. Specifically, this can be done by waiving the depreciation recapture tax liability where investors sell their property to new owners who agree to invest new capital in the property and to preserve it as affordable for another 30 years.

In both exit tax bills the 25 percent recapture tax was completely excluded and any long-term capital gain was taxed at 25 percent. This formula was developed to especially help affordable housing properties in high cost areas and to keep the cost of the proposal as low as possible. Properties eligible for exit tax relief in H.R. 3715 included Section 236 National Housing Act assisted properties, including state financed properties; section 512(2)(B) of the Multifamily Assisted Housing Reform and Affordability Act of 1997; properties subject to or insured under title V of the Housing Act of 1949; and low-income Housing Tax Credit properties. The list of eligible properties was identical for the Senate bill with the exception of LIHTC properties, which were excluded.

Update

NAHB and our allies made significant progress in the 109th Congress educating members of Congress as to the importance of exit tax relief. Ultimately, however, neither bill was passed into law. We will return to the issue in the 110th Congress with special focus on securing a budget score for the legislation from the Joint Committee on Taxation (JCT). This score is critical to the viability of the bill and NAHB has contributed significantly to the process by developing an economic model to aid in scoring the bill. NAHB is also revisiting who are the best lead cosponsors on exit tax legislation and will work with key members of the tax-writing Committees to reintroduce the bill.

ISSUE: Tax
CATEGORY: Homeownership Tax Credit

NAHB supports legislation that will provide a tax credit to developers/investors that build or substantially rehabilitate homes for sale to moderate and low-income buyers in hard-to-develop areas. The administration supports this proposal as the legislative component in its effort to expand homeownership opportunities for minorities. Bi-partisan bills have been introduced in the House and the Senate.

Background

The Bush Administration included a housing proposal called the *Renewing the Dream Homeownership Tax Credit* in its FY 2002, 2003, 2004, and 2006 budget proposals. The proposal, modeled after the Low-Income Housing Tax Credit, is designed to encourage the new construction and substantial rehabilitation of homes for sale to low and moderate-income families in economically distressed urban and rural areas.

The Homeownership Tax Credit proposal by the Administration provides an annual federal tax credit of \$1.80 per capita, or a minimum of slightly more than \$2 million per state, that would be allocated to developers who construct or rehabilitate owner-occupied homes in census tracts at or below 80 percent of area or state median income, whichever is higher (70 percent for families with less than three members). Developers could claim the credits or sell them to other investors who would provide financing for the construction or rehabilitation of the homes. Investors would claim credits over a five-year period without the threat of recapture or further obligation once the homes are sold to buyers with incomes of 80 percent or less of the greater of the area or statewide median income.

In the 109th Congress, Senators Rick Santorum (R-PA), Gordon Smith (R-OR), John Kerry (D-MA) and Debbie Stabenow (D-MI) introduced S. 859. The bill is a compromise based on the three separate HOTC proposals that were introduced in the last Congress. In the House, Representatives Tom Reynolds (R-NY) and Ben Cardin (D-MD) introduced, H.R. 1549. The bill was identical to the House version introduced in the 108th Congress and garnered 184 cosponsors. Further, in an effort to reduce the \$16.8 billion cost of the HOTC, Rep. Reynolds, with the help of NAHB, drafted three alternative proposals. The official revenue estimates for the three alternatives are significantly lower in cost, but remain in the billions of dollars.

Update

NAHB and our industry allies will pursue a HOTC bill in the 110th Congress, but the structure of that proposal will likely be very different from past versions. The legislation as written is very expensive and will not pass muster in the current constrained budget environment. The housing community is in discussions now as to what new legislation should look like as well as identifying the best lead co-sponsors.

ISSUE: Tax

CATEGORY: Low Income Housing Tax Credit (LIHTC)

The LIHTC is the nation's most important program for producing new affordable housing and has produced over one million new units of affordable housing since its creation in 1986. There are, however, some aspects of the LIHTC program that are now obsolete or unnecessarily burdensome that act to constrain the production potential of the program. There are also aspects of the tax-exempt bond and mortgage revenue bond (MRB) programs – often used in conjunction with the LIHTC program – that could be improved to make them more effective. There are improvements that could be made to modernize the LIHTC and maximize its value as a tool for affordable housing production and rehabilitation.

Background

In March of 2006, Representative Jim Ramstad (R-MN) introduced H.R. 4873, legislation making improvements to the LIHTC, tax-exempt bond and mortgage revenue bond programs. For the LIHTC, the bill made a number of improvements, including: 1) changed the name of the program to the “Affordable Housing Credit,”; 2) fixed the tax credit percentages at 9 and 4 percent; 3) allowed projects with 9 percent credits to also include federal subsidies (with the exception of tax-exempt bonds); 4) expanded properties eligible for the 30 percent basis boost; 5) applied the scattered site rule to projects where rent-restricted units are distributed proportionally to the number of residential units in each building; 6) eliminated the restriction against using LIHTCs with Section 8 Moderate Rehabilitation projects; 7) allowed the LIHTC (and interest on bonds) to count against the AMT ; 8) repealed the recapture bond rule.

For the tax-exempt bond program, H.R. 4873: 1) conformed the next available unit rule for the Tax-Exempt Bond program to the LIHTC program; 2) conformed the rules regarding students meeting the income test to that of the LIHTC program; 3) allowed Single Room Occupancy units to qualify as residential units under the Tax-Exempt Bond program, as defined in the LIHTC program. Finally, for the MRB program, the legislation: 1) repealed the ten-year rule; and 2) eliminated the first-time homebuyer rule for disaster victims, single-parents and displaced homemakers.

Update

Both Chairman Rangel of the House Ways and Means Committee and Chairman Barney Frank (D-MA) of the House Financial Services Committee have stated that they want to introduce legislation improving the ability of the LIHTC to produce affordable housing. To that end, key staff members from both committees are meeting to identify specific reform items in the LIHTC program and in housing programs typically used with housing tax credits. NAHB and our industry allies have been approached to make our own recommendations and are in the process of assembling those.

ISSUE: Tax
CATEGORY: Tax Reform

NAHB supports the current incentives for housing in the federal tax code. Any significant revision to the tax system that either simplifies the current income tax or replaces it with a different tax system could diminish or eliminate those incentives. Both the Bush Administration and the House Republican leadership have expressed interest in exploring tax simplification proposals in the 109th Congress. These proposals include a National Retail Sales Tax, Value Added Tax, Flat Tax and a simplification of the current tax code. NAHB is pursuing a strategy to ensure that the current housing tax incentives remain in federal statute.

Background

In January, 2005, President Bush created the President's Advisory Panel on Federal Tax Reform (the Panel) to study and report recommendations for federal tax reform. The Panel held ten public meetings at locations across the nation designed to gain insight into the current tax system, receive testimony on the problems associated with the tax code, and provide reform recommendations. NAHB attended all public meetings of the Panel and met privately with the staff of the Panel.

On November 1, the Panel released its formal recommendations to the Treasury Department. With respect to the current housing tax incentives, the Panel recommended the following: 1) Eliminate the mortgage interest deduction and replace it with a Housing Credit that would allow all taxpayers to receive equal to 15 percent of the interest on a mortgage up to the Federal Housing Administration (FHA) limit for the area (approximately \$227,000 to \$412,000); 2) eliminate the state and local tax deduction (including property taxes); 3) eliminate the deduction of interest on a home equity loan; 4) eliminate any tax preferences for second homes; and 5) eliminate the Low Income Housing Tax Credit (LIHTC).

NAHB and our partners in the real estate industry raised vehement objections to this proposal and immediately went to Congress urging members to oppose any such tax reform proposal. Congress agreed and the Panel's recommendations went nowhere in the 109th Congress. The House Ways and Means and Senate Finance Committees did, however, hold hearings on tax reform throughout 2006 examining various areas of the tax code.

Update

There is no indication that the new Democratic Congress will take on full-scale tax reform in the 110th Congress. Incoming Chairman Rangel and Baucus have indicated interest in addressing some key issues in the tax code – the growing impact of the Alternative Minimum Tax and the tax “gap,” respectively – that could lead to broader tax reform discussions. NAHB continues to monitor these discussions and is prepared to weigh-in as necessary in defense of housing incentives in the tax code.