

# Revive Housing – Restore America

## Supplemental Background Material

### Homebuyer Tax Credit Proposal

The American Recovery and Reinvestment Act of 2009 (ARRA) improved the homebuyer tax incentive enacted in 2008 by establishing an up to \$8,000 refundable tax credit for first-time buyers of a principal residence in 2009. The law defines a first-time home buyer as a buyer who has not held an ownership stake in a principal residence in the three years prior to the sale. To claim the tax credit, the taxpayer must complete the sale of the home before December 1, 2009. The credit is subject to an income phase-out that begins at \$75,000 modified adjusted gross income for single taxpayers and \$150,000 for married taxpayers. Partial credits are available for some taxpayers with incomes above those amounts.

The tax credit has had a demonstrable positive effect on housing demand. As of March 2009, more than 500,000 taxpayers had claimed the tax credit on 2008 returns (under the less favorable 2008 rules). NAHB's website promoting the tax credit ([federalhousingtaxcredit.com](http://federalhousingtaxcredit.com)) has received more than 4 million visits from prospective buyers. Recent data from the National Association of Realtors indicates that 40 to 50 percent of recent home sales are due to first-time buyers, and this increase in demand is in part responsible for recent declines in housing inventories.

An important element to maximizing the economic impact of the homebuyer tax credit is the ability to apply the proceeds of the tax incentive to the actual purchase of the home; that is, to monetize the tax credit. At NAHB's urging, the ARRA legislation removed certain tax law obstacles that prevented almost all monetization programs. As a result, and with the blessing of the Federal Housing Administration, more than 16 state housing agencies have established tax credit loan or grant programs that monetize the tax credit for homebuyers needing the tax credit to fund a down payment on the purchase of a home.

In total, NAHB estimates that the ARRA tax credit program will spur nearly 200,000 additional home sales in 2009.

However, as the deadline for the tax credit program approaches, NAHB supports extending and enhancing this important housing demand stimulus program. In particular, NAHB recommends extending the sunset date until December 1, 2010, and expanding the eligible buyer definition to include all purchasers of a principal residence.

### Appraisal Proposals

*The federal agencies and organizations that establish appraisal requirements for home mortgages should immediately issue and enforce guidance that requires appraisers to obtain sufficient information and make appropriate adjustments in the prices of comparable sales to bring those comps to the level that represents a reasonable alternative to the home they are appraising.*

There are increasing complaints of appraisers using foreclosure or other distressed sales as comparables in determining values of single family homes without properly adjusting the comparable property values to reflect the relative condition of the properties. If foreclosed and/or distressed property sales are used as comparables, appropriate adjustments must be made to reflect the condition of such properties as compared to the subject property. Improper or insufficient adjustments to the comparable values of foreclosed and/or distressed homes results in the undervaluation of new sales transactions. Such practices contribute to a continuing downward spiral in home prices and forestall economic recovery.

Often, properties that have been subject to foreclosure or distressed sales have issues relating to deferred maintenance or internal damage that an external inspection simply cannot reveal. A prospective purchaser would most assuredly recognize the differences in the value proposition between a well-kept home and a distressed property that is damaged or not properly maintained and the same should be true of an appraiser.

The Federal Housing Administration and Fannie Mae and Freddie Mac, which are regulated by the Federal Housing Finance Agency, establish appraisal requirements for most of the home mortgages written in today's marketplace. NAHB is proposing that members of Congress urge these agencies and organizations to issue and enforce guidance that instructs appraisers on the proper procedures for the use of distressed and/or foreclosed properties as comparables. Any such guidance should encourage appraisers to expand the area and/or the time frame from which comparable properties are selected if a sufficient number of properties that have not been subject to foreclosure or distressed sales are not available in the area of the subject property. In addition, the guidance should emphasize that an appraiser should further investigate and consider the overall condition of a property and the specific factors related to a foreclosure or distressed property sale in determining value when a foreclosed property is used as a comparable.

***Establish a requirement for an appeals process for Fannie Mae, Freddie Mac, and the Federal Housing Administration similar to that used for appeals of appraisals performed with the Department of Veterans Affairs (VA) Loan Guaranty Program.***

The VA instituted a policy in 2003 to reduce the number of requests for reconsideration of property values by facilitating improved communication between appraisers and lenders before appraisal assignments are completed. This policy was a result of a successful pilot program that had been tested in the Tidewater region of Virginia.

In situations where an appraiser believes an appraisal would result in a value less than the sale price of a property, VA instructs the appraiser to contact the lender and allow two working days for the lender to provide additional information. In addition, the lender can specify another point of contact for the appraiser, such as a builder or Realtor, at the time the appraisal is ordered. By specifying a third party as a point of contact, a lender can reduce delays in getting additional information to the appraiser.

## **AD&C Proposals**

***The federal banking regulators should take immediate decisive action to alter practices by bank examiners that are impeding the flow of credit for residential acquisition, development and construction (AD&C) loans and causing unnecessary foreclosures on performing AD&C loans.***

Increasingly, banks are refusing to extend new AD&C credit or to modify outstanding AD&C loans in order to provide builders more time to complete their projects and pay off these loans. Often this is being forced by examiners demanding that banks shrink their AD&C loan portfolios. On outstanding loans, examiners are requiring banks to obtain new appraisals on properties for fully performing loans, which can result in the banks having to downgrade those loans, turning them into troubled “non-performing performing loans.” Once a loan is classified as such, the institution must hold more capital against the loan. As a result, an increasing number of builders are being required to put up additional equity or collateral due to reappraisal of collateral or revaluation of their loan. Since most home building companies are small businesses and do not have the capacity to meet significant equity calls, the result is often foreclosure on a loan that had been performing.

NAHB is proposing that members of Congress urge the federal banking regulators to put a halt to these shortsighted practices that are adversely affecting the financial condition of the banking industry, as well as having devastating impacts on home building companies. Instead, financial institutions should be encouraged to fund viable new projects and to take steps to avoid foreclosure on AD&C loans by accommodating loan modifications and workouts. This would provide relief for a major sector of the economy that has suffered because of regulatory overkill and the inability of banks to provide the necessary funding and flexibility that would otherwise keep loans performing as scheduled.

***Banks that have received funds from the Troubled Asset Relief Program (TARP) should be required to account for how these funds are being used in financing and/or working out loans on acquisition, development and construction (AD&C) projects.***

Treasury allocates funds from the Troubled Asset Relief Program through the Capital Purchase Program (CPP), which was established in October 2008. Through the CPP, Treasury invests in viable banks to stabilize the financial system by building up the capital bases of banks to enable continued lending.

In many instances, banks that have received TARP funds are letting projects fail rather than pursuing workouts with the original developer and builders. This questionable action, which imposes serious hardship on home builders, often putting them out of business, should not be condoned or subsidized by the federal government.

All CPP participants are required to report data on a monthly basis on lending activity, specifically average consumer loans outstanding, average commercial loans outstanding (category includes AD&C loans) and total loans outstanding. This is intended to increase transparency and track the impact of TARP/CPP on lending. However, banks have stated that

because TARP funds are fungible, it is difficult to tie lending trends specifically to the receipt of TARP funds. Banks also have balked at providing additional details/breakdown of lending by asset categories.

Congress should direct the banking regulators to require banks that have received TARP funds to account for how these funds are being used in lending on new projects. Further, they must demonstrate how the institution is working out the restructuring of existing loans and providing more flexible terms to facilitate continued funding and eventual repayment of performing AD&C loans.

### **Net Operating Loss Carryback**

Under prior law, business taxpayers reporting net operating losses (NOL) could apply such losses as deductions against prior taxes paid in immediate two tax years prior to the year of the loss. However, such a two-year carryback window is insufficient for long recessions (the current recession is the longest since World War II) and business sectors that are highly cyclical, such as residential construction. If businesses are unable to claim all of their accumulated NOL deductions against prior tax years, they may carry them forward for up to 20 years. However, given the need for capital today as a result of the credit crunch, NOLs can be an important financial tool for businesses to weather the economic storm.

The American Recovery and Reinvestment Act of 2009 (ARRA) expanded the present law carryback period to five years but only for losses arising in 2008 and only for small businesses, which are defined as any business with average gross receipts of no more than \$15 million. This gross receipts test may exclude many businesses in the home building sector.

To enhance the ARRA NOL carryback provision, NAHB recommends expanding the 5-year carryback period for tax losses arising in 2008 and 2009 and repealing the gross receipts test. NAHB also supports legislative language establishing regulatory rules preventing churning or wash sale transactions. Also, NAHB recommends that the 90% AMT limitation on NOL carryback deductions be suspended for 2008 and 2009 losses so that businesses organized as pass-thru entities can claim the full benefit of any NOL legislation.

NAHB concurrently supports S. 823, introduced by Senators Max Baucus and Olympia Snowe, which has 37 cosponsors, and H.R. 2452, introduced by Representatives Richard Neal and Pat Tiberi, which has 92 cosponsors, as part of this legislative effort. NAHB urges all senators and representatives to co-sponsor these pieces of legislation.