NAR Issue Brief

Commercial Issues and Actions

• **ISSUE: *Accelerated Depreciation***: Over half of all commercial mortgages are "underwater." Property owners continue to have difficulty overcoming this equity gap and obtaining refinancing. Last year, Rep. Berkley (D-NV) introduced H.R. 5943, the Community Recovery and Investment Act of 2010. This temporary tax proposal incentivizes equity investment in distressed commercial real estate assets by allowing a one-time 50 percent bonus depreciation, and permitting investors to take any losses without regard to passive loss limitations. Similar legislation, H.R. 1147, has been reintroduced by Rep. Nunes (R-CA), which would also incentivize investment in distressed commercial real estate assets.

NAR Action: NAR has testified three times before Congress on the issue of accelerated depreciation, also submitting two statements for the record at hearings where we were not invited to testify. NAR also signed onto two coalition letters, combining its voices with those of other interested organizations, while continuing to meet with lawmakers regularly.

• **ISSUE*: Bank Liquidity***: Plummeting real estate prices and high commercial real estate loan exposure at regional and community banks has forced these financial institutions to take massive write-downs, which has resulted in bank failures as well as a reduction in credit to businesses.

NAR Action: NAR testified on this issue on three separate occasions, also submitting multiple statements for the record and writing letters to key members of Congress. NAR staff continues to meet regularly with lawmakers, urging Congress and the Obama Administration to help banks clear balance sheets of toxic assets.

• **ISSUE: *Basel Capital Standards***: In September 2010, the Basel Committee on Banking Supervision announced new, higher capital standards that boost minimum common equity requirements to 7% by January 1, 2019. The Committee said banks must hold at least 4.5% of minimum common equity, but add an additional "conservation buffer" of 2.5% to withstand future periods of financial stress. The Basel Committee includes representatives from approximately 30 countries, including the United States, and develops guidelines and standards related to bank supervision.

NAR Action: After two letters to the Basel Committee on Banking Supervision, NAR continues to meet with Congress and the Administration to ensure Basel III rules do not significantly reduce liquidity in commercial real estate credit markets.

• **ISSUE: *Building Labeling***: The widespread belief on Capitol Hill is that investments to improve the energy efficiency of commercial buildings will create jobs that stay in the US, will pay for themselves over time, and reduce dependence on foreign oil. Large federal subsidies, cost shares, or tax expenditures to support energy efficiency (e.g. Building Star) will likely be less popular because of their impact on the deficit. Therefore, lawmakers will likely introduce deficit-neutral legislation that could include energy labeling, building standards, or mandates at time of transfer/point-of-sale, all of which would be very costly and burdensome to REALTORS®.

NAR Action: NAR continues to work with Congress and the Administration to oppose laws and rules that include energy labeling, building standards, or mandates at the time of transfer/sale of commercial properties.

• **ISSUE:** ***Carried Interest***: In 2010, NAR successfully defeated legislation to raise the carried interest tax rate up to ordinary income. Proposals to modify the existing carried interest rules are likely to be reintroduced during the 112th Congress and could have a severely negative impact on real estate partnerships. The carried interest mechanism for real estate partnerships is a standard operating practice not historically treated as a "loophole," but rather as a reward for entrepreneurs who take risks inherent in new projects and in making capital investments.

NAR Action: NAR consistently opposes any proposal that would eliminate capital gains treatment for any carried interest of a real estate partnership, even executing a Call-for-Action on the subject in May of 2010.

• **ISSUE:** ***Commercial Lead-Based Paint***: On May 6, 2010, the Environmental Protection Agency (EPA) issued an Advanced Notice of Proposed Rulemaking (ANPR) concerning the Renovation, Repair and Painting Program for Commercial and Public Buildings to solicit feedback on a proposed program similar to the one affecting homes. The residential version aims to reduce children's exposure to lead dust during renovation activities.

NAR Action: NAR has been in contact with EPA and with key lawmakers to ensure that EPA stays within the scope of its authority, while taking into account the myriad factors that distinguish commercial buildings from their residential counterparts. Some of these factors include patterns of exposure to lead paint, and limited use of lead paint in commercial buildings since 1978.

• **ISSUE:** ***Credit Union Lending***: Legislation to raise the artificial credit union business lending (MBL) cap has been introduced in both chambers. H.R. 1418 (Rep. Royce, R-CA) and S. 509 (Sen. Udall, D-CO) would increase the cap on credit union MBL from 12.25% to 27.5% (total assets) for well-capitalized credit unions.

NAR Action: NAR testified three times in support of these proposals, also submitting two statements for the record at hearings where we were not invited to testify. NAR also sent two letters to the full Senate and one letter to the Full House of Representatives urging passage of these measures. The issue was a talking point for the 2010 NAR Mid-Year Meetings.

• **ISSUE:** ***Covered Bond Market***: Covered bonds are securities whose underlying assets are typically a pool of commercial or residential mortgage or public-sector loans. Already in use in Europe and Canada, covered bonds represent a potential complementary funding source in the U.S. housing finance system as well as an alternative to securitization that could help address ongoing refinancing challenges in the commercial real estate sector.

As credit markets continue to decline, the creation of a covered bond market in the U.S. will be essential to increase liquidity. Last year, the House Financial Services Committee approved legislation (H.R. 5823) introduced by Reps. Garrett (R-NJ) and Kanjorski (D-PA) that would encourage development of a U.S. covered bond market. The bill may be reintroduced in the 112th Congress.

NAR Action: NAR supports the covered bonds proposals as a means of providing more liquidity to the U.S. real estate market, and we have been in contact with the relevant Congressional committees and representatives to promote them.

• **ISSUE:** ***Data Security***: Technology has dramatically increased the amount of consumer data collected and used by businesses. Several recent high profile data breaches, coupled with a high rate of identity theft crime has made data security and consumer privacy a hot issue for policymakers in Washington.

S. 3742, the Data Security and Breach Notification Act of 2010, was introduced last year. This bill would require security policies and procedures to protect data containing personal information, and provide for nationwide notice in the event of a security breach.

NAR Action: NAR continues to meet with and write letters to key Members of Congress to support efforts to protect consumers' sensitive personal information.

• **ISSUE: *Dodd-Frank Law/Rules*:** Under the new Dodd-Frank Wall Street Reform and Consumer Protection Act, banks that package loans into CMBS are required to keep 5% of the credit risk on their balance sheets. Under the provision, a third-party investor—in addition to the securitizer or originator of loans—is permitted to satisfy requirements for CMBS under certain conditions. Further complicating matters are new accounting rules that could force issuers to reconsolidate the other 95% back on their balance sheets because they retain "control" of 5%. If not appropriately implemented, these new rules could slow the recovery of the CMBS market.

NAR Action: NAR has been in frequent contact with key lawmakers and regulators in support of polices that enhance the flow of credit to the commercial real estate industry.

• **ISSUE: *Fair Value Accounting*:** The Financial Accounting Standards Board (FASB) has proposed new accounting rules that would require banks to report the fair value and amortized cost of a loan on their balance sheets, a method known as "fair value" or "mark-to-market" accounting. This would force financial institutions to take huge write-downs or losses, particularly during periods of economic distress, and result in a further contraction of credit to the real estate industry. However, FASB abandoned its May 2010 "fair value" proposal. FASB's fair value initiative is part of a broader proposed rule, which is not expected to be finalized until mid-summer 2011.

NAR Action: NAR has worked with lawmakers, regulators, and FASB to implement more flexible mark-to-market accounting rules and encourage the use of other valuation tools to assist with valuing assets in illiquid markets.

• **ISSUE: *GSE Reform*:** A plethora of bills have been introduced to reduce the role of government-sponsored entities (GSEs). Sen. John McCain and Rep. Jeb Hensarling (R-TX) introduced the "GSE Bailout Elimination and Taxpayer Protection Act" (S. 693 and H.R. 1182, respectively), and the House Financial Services Capital Markets Subcommittee approved a series of eight bills covering various aspects GSE reform.

Beyond the decision to make this issue a talking point for the 2011 NAR Mid-Year Meetings, NAR has orchestrated fly-ins with large-firm executives, testified multiple times, written several letters and submitted several statements to Congress, and held countless meetings with key lawmakers.

NAR Action: NAR continues to help decision makers understand the importance of ensuring reforms provide for the adequate flow of credit to the multifamily sector.

• **ISSUE: *Health Insurance Deduction*:** For many years, self-employed individuals have been permitted to deduct from their self-employment (Schedule C) income the cost of any health insurance premiums they pay for themselves and their families. The health insurance premium, however, was NOT permitted as a deduction when computing payroll taxes, so the self-employment payroll tax base included the full amount of the premium. The new provision will permit health insurance premiums to be deducted from the self-employment tax base, as well as from the income tax base for only the 2010 tax year.

The Small Business Jobs and Credit Act of 2010 (H.R. 5297) allows self-employed individuals to deduct health insurance costs for themselves and their families when they compute their self-employment tax. Premiums continue to be deductible for income tax purposes.

NAR Action: NAR has testified and written letters to urge extension of this tax benefit with the goal of making it permanent.

• **<u>ISSUE: *Lease Accounting*</u>:** Last year, the Financial Accounting Standards Board (FASB) and International Accounting Standards Board (IASB) proposed new lease accounting rules that would reduce the overall borrowing capacity of many commercial real estate lessees and lessors. Under the proposal, companies would be required to use a "right-of-use" accounting model where both lessees (renters) and lessors (property owners) recognize assets and liabilities arising from lease contracts. In this scheme, lessees will push for shorter-term leases to minimize their costs. Since lessors raise financing by using the leases and value of the property as collateral, the amounts they can borrow in the future could be reduced if lease terms are shortened. The effective date of this proposal will likely be in 2012 – 2013.

On February 17, 2011, FASB and IASB agreed in a joint meeting to rework their August 2010 proposal that would have required companies to capitalize all leased assets, including real estate, back onto their balance sheets. However, FASB Chairman Leslie Seidman clarified in a recent interview this should not be taken as a retreat on their original proposal or as a shift back to current lease accounting standards. In April 2011, both Boards agreed to delay the finalization of their rules for at least a "few months."

<u>NAR Action</u>: NAR has written letters and added its voice to coalitions to express concern the new lease accounting proposal will be detrimental to our nation's economy by reducing the overall borrowing capacity of many commercial real estate lessees and lessors.

• **<u>ISSUE: *Mortgage Insurance Program*</u>**: A mortgage insurance program to cover the difference between the current appraised value of a property and the debt currently servicing the property would help on a short-term basis. The program could be structured to limit eligibility to performing properties that produce income and are viable in the long-term. Banks would pay a guarantee or insurance fee that would help fund the program. The insurance could be short-term and designed to cover this equity gap until the markets rebound.

<u>NAR Action</u>: NAR has testified and submitted multiple statements to Congress supporting the creation of a commercial mortgage insurance program, and continues to meet with lawmakers on the issue.

• **<u>ISSUE: *Natural Disaster Insurance*</u>**: Insurers responded to recent natural disasters by raising insurance rates or declining to write policies. In the last Congress, NAR testified in favor of legislation to offer federal reinsurance or loan guarantee as alternatives to a volatile global market for qualified states to stabilize insurance rates; as well as legislation to clarify insurance coverage under the NFIP where there is wind as well as flood damage. Legislation regarding natural disaster policy will likely be introduced this Congress.

<u>NAR Action</u>: NAR will continue to testify and send letters to key lawmakers to support the development of a federal natural disaster policy that promotes the availability and affordability of property insurance nationwide, while coordinating efforts at all levels of government involving pre-disaster property mitigation as well as post-disaster assistance.

• **<u>ISSUE: *National Flood Insurance Program (NFIP):*</u>** For the past few years, Congress has approved several short-term extensions of the National Flood Insurance Program's (NFIP) authority to issue flood insurance policies while they continue to debate long-term financial reforms. Last year, Congress allowed the NFIP to lapse several times, which halted real estate transactions in areas where property owners are required to purchase flood insurance to obtain a mortgage. The NFIP has been extended through September 30, 2011.

<u>NAR Action</u>: NAR has testified multiple times and sent countless letters to Congress to support long-term extension of the NFIP. The issue is now a talking point for NAR's 2011 Mid-Year Meetings. NAR supports efforts to renew and strengthen the long-term viability of the NFIP, including efforts to improve the accuracy of flood insurance rate maps used to determine which properties require flood insurance; continued inclusion of comprehensive coverage for non-primary residences (e.g., rental properties and second homes); and reforms that provide "full risk" premiums for most repetitive loss structures in many states.

• **<u>ISSUE:</u>** ***<u>Small Business Administration (SBA) Loans</u>:*** Last September, President Obama signed into law the Small Business Jobs and Credit Act of 2010, which improved both SBA 7(a) and 504 loan programs, raising loan limits from $2 to $5 million for SBA 7(a) loans and from $1.5 to $5.5 million for SBA 504 loans. Moreover, it allows 504 loans to be used to refinance short-term commercial real estate debt into long-term, fixed rate loans. Provisions in the bill temporarily increased the 7(a) loan guarantee to 90% and eliminated fees for all 7(a) and 504 loans through 2010. Additionally, the law allows the SBA to create a temporary commercial refinance program.

Beginning April 4, 2011, the SBA expanded its temporary 504 commercial real estate refinance program to assist more small business owners struggling to refinance commercial loans. This new refinancing option was initially restricted to businesses with commercial real estate mortgages maturing by the end of 2012, but now small businesses will be allowed to refinance certain owner-occupied commercial real estate loans maturing after 2012. The 504 refinance program provides an SBA loan for up to 40% of the appraised property value with no less than 10% of the remaining amount to be contributed by the borrower.

<u>NAR Action</u>: NAR has testified three times, submitted two statements for the record of hearings where we were not invited to testify, and sent three letters to Congress to support a less arduous SBA application process, an extension of the SBA's 90% guarantee, an elimination of SBA loan fees, and the inclusion of "non-owner-occupied" properties as part of the SBA's 504 refinance program.

• **<u>ISSUE:</u>** ***<u>Small Business Lending Fund (SBLF)</u>*****:** Last year, President Obama signed into law the Small Business Jobs and Credit Act of 2010 (H.R. 5297). Under this NAR-supported bill, the U.S. Treasury was authorized to lend up to $30 billion to community banks to expand lending to small businesses. As an incentive for participating community banks, their interest rate will be adjusted based on the amount of their small business lending activity. Community banks could use the $30 billion lending fund to leverage up to $300 billion in new loans to small businesses. Additionally, the bill enhanced SBA programs and provided $12 billion in small business tax breaks. The U.S. Treasury will be finalizing rules for participation in the Small Business Lending Fund (SBLF).

<u>NAR Action</u>: NAR has sent four letters, testified twice, and continues to meet with lawmakers and regulators to support the small business lending fund, encouraging the U.S. Treasury to avoid including provisions in its SBLF term sheet that will deter banks that need capital help from participating in the program.

• **<u>ISSUE:</u>** ***<u>Term Asset-Backed Loan Facility (TALF)</u>:*** As the Federal Reserve Board unwound its emergency liquidity programs, NAR urged members of the House Financial Services Committee to continue addressing the tremendous challenges facing the commercial mortgage market. Specifically, NAR encouraged the extension of the Term Asset-Backed Securities Loan Facility (TALF) for legacy and newly issued commercial mortgage-backed securities (CMBS). NAR successfully lobbied to extend the TALF program two times, providing much-needed liquidity to the commercial mortgage-backed securities (CMBS) market. TALF was responsible for jumpstarting the frozen CMBS market.

• **<u>ISSUE:</u>** ***<u>Tax Extenders Package</u>*****:** At the end of 2010, President Obama signed into law H.R. 4853, the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010. This legislation includes the retention of 15% capital gains rate, reinstatement of the stepped-up basis rules under the estate tax, expansion of the estate tax exclusion, lower estate tax rates, shorter depreciation recovery periods for leasehold improvements, enhanced expensing for some assets, improved building energy tax credits, Alternative Minimum Tax (AMT) relief, adds temporary relief from payroll taxes, and extended the Brownfields Cleanup Tax Incentive. Many of these tax benefits expire by the end of 2011, but NAR has written Congress and continually meets with key decision-makers to encourage a tax structure that promotes investment in commercial real estate.

• **ISSUE: *Term Extensions***: For performing loans that can service their existing debt, a simple term extension in lieu of refinancing makes the most sense. Currently lenders are not offering extensions because they are wary of oversight and regulatory concerns. Additional federal guidance encouraging these types of extensions for appropriate properties would be a helpful tool.

NAR Action: NAR has testified twice, submitted two statements for the record, and sent multiple letters to Congress in support of allowing property owners to rollover distressed, but performing loans. The issue was also a talking point for NAR's 2010 Mid-Year Meetings.

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