

ENERGY, CLIMATE CHANGE REFORM, PRIORITIES FOR CONGRESS AGAIN

ALTHOUGH ENERGY AND CLIMATE CHANGE LEGISLATION TOOK A BACKSEAT TO HEALTH-CARE DEBATES IN LATE 2009, Congress will focus again this year on passing legislation to reduce greenhouse gas emissions.

In June 2009, the U.S. House of Representatives passed H.R. 2454, the American Clean Energy and Security Act. The original draft would have: (1) required energy audits for all buildings and homes, (2) mandated buildings be labeled with an energy rating, and (3) the label be disclosed at time of lease and/or sale.

IREM lobbied against these provisions and instead asked Congress to support positive incentives for retrofitting buildings with energy-efficient improvements, such as those included in H.R. 1778 by Rep. Peter Welch (D-VT). This proposal was later approved as an amendment to H.R. 2454.

Additionally, the approved House bill does not require audits; limits labeling to new construction only; and prohibits the EPA from regulating commercial buildings



under the Clean Air Act. Overall, the real estate provisions in the version passed were much more favorable to the commercial real estate industry.

On November 5, 2009, the Senate Environment and Public Works Committee passed a similar climate bill, calling for a 20-percent cut in greenhouse gas emissions from 2005 levels by 2020. This bill still needs to be presented and voted on by the full Senate. If the Senate passes its own version of an energy and climate bill, a House-Senate conference committee will be held to reconcile differences between the two bills.

IREM and NAR will continue to work with members of Congress to ensure the provisions in any energy/climate change legislation remain favorable to the commercial real estate industry.

Five firms agree to fund PPIP

The U.S. Department of Treasury announced that five private investment funds will invest \$3.07 billion in the department's long-awaited program to purchase toxic real estate-related assets.

Under the Public Private Investment Program (PPIP), the Treasury will match the \$3.07 billion investment dollar for dollar. Additionally, the federal government will provide debt financing, which will increase the purchasing power of all five groups to \$12.27 billion. The five firms investing in PPIP are BlackRock Inc., Wellington

Management Co., AllianceBernstein, TCW Group and Invesco Ltd.

PPIP, a government program aimed at purchasing soured assets that have contributed to the tight credit market, has gotten off to a slow start since it was announced earlier this year. Nonetheless, the five firms participating in the program will help banks sell toxic real estate assets, including commercial mortgage-backed securities (CMBS), which is an encouraging sign for the commercial real estate industry.



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LAWMAKERS UNDER PRESSURE SEEK NEW REVENUE SOURCES

FALLING TAX REVENUES AND INCREASED GOVERNMENT SPENDING BECAUSE OF THE ECONOMIC CRISIS HAVE PUT LAWMAKERS UNDER PRESSURE TO SEEK NEW REVENUE SOURCES. In addition, House Ways and Means Committee Chairman, Charlie Rangel (D-NY), has indicated that “everything is on the table” as part of his plan to restructure the current tax code. This could mean allowing the 2001-2003 Bush tax cuts to expire in 2011 or possibly repealing some of these tax cuts before their expiration date.

President Obama’s pledge not to raise taxes on the middle class makes it likely the democratically controlled Congress will discuss increasing the top two income tax rates or allowing the tax cuts for those groups to expire in 2011. If these top rates increase, less money will be available for high-income earners to invest in commercial real estate, putting more pressure on the industry.

Also, in light of the economic crisis, President Obama has stated the capital gains rate will remain unchanged during 2010. Unless Congress acts, however, the current 15 percent rate will revert back to 20 percent on January 1, 2011. Any tax increase related to real estate clearly discriminates against the asset class as compared to other assets and puts it at a greater competitive disadvantage for investment dollars. Additionally, it puts more pressure on a fragile commercial real estate industry already facing a rapid rise in delinquencies and foreclosures, as well as a growing challenge to access credit.

Moreover, the commercial real estate industry has an estimated \$1 trillion in loans maturing in the upcoming years. The combination of insufficient refinancing and real estate-related tax increases will most likely leave the commercial real estate industry ailing for the near future, resulting in an overall slower economic recovery.

Whatever direction Congress and President Obama take, IREM will continue to fight for tax policy that would encourage investment in the commercial real estate industry.

TREASURY GUIDANCE ON REMIC GIVES OWNERS MORE FLEXIBILITY

In September 2009, the U.S. Department of Treasury issued highly anticipated final guidance for commercial mortgage loans held by a Real Estate Mortgage Investment Conduit (REMIC). REMICs are a vehicle by which commercial mortgages are securitized.

Previously, borrowers with loans securitized through a REMIC were unable to significantly modify their property to meet changing market trends. These constraints limited the attractiveness of securitizing commercial loans, as well as the flexibility of borrowers to meet debt obligations as market trends change.

This final rule (Revenue Procedure 2009-45) provides guidance regarding modifications to certain mortgage loans without triggering an IRS challenge to the tax status of the REMIC. The guidance permits a change in the terms to be negotiated if—based on all the facts and circumstances, and after meeting the threshold for a qualified loan—the holder or servicer reasonably believes a “significant risk of default” exists upon maturity of the loan or at an earlier date, and the modified loan will present a “substantially reduced risk of default.” These guidelines will apply to loan modifications in effect since January 1, 2008.

Additionally, the Treasury department issued final regulations (TD 9463) expanding the list of exceptions that will not be considered “significant modifications” of an obligation held by a REMIC. Effective September 16, 2009, this expanded list of exceptions include modifications that release, substitute, add, or otherwise alter a substantial amount of the collateral so long as the obligation continues to be “principally secured by an interest in real property.”

These updated IRS guidelines should provide much needed flexibility for owners with properties utilizing REMICs and facilitate better communication and planning between the servicer and the borrower.