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Talking Points - Mortgage Debt Cancellation Relief

Congressional Action Needed

The Mortgage Debt Cancellation provision expires December 31, 2016. Now is the time to remind for Members of Congress why Mortgage Debt Cancellation needs to be extended.

Congressional Actions To Date

H.R. 1002, the Mortgage Forgiveness Tax Relief Act of 2015, has been introduced by Rep. Reed (R-NY) and is in the House Ways and Means Committee.

S.608, the Mortgage Forgiveness Tax Relief Act, has been introduced by Sen. Stabenow (D-MI) and is in the Senate Finance Committee.

What To Tell Your Representatives and Senators

Extension of Mortgage Debt Cancellation Relief legislation is still needed as many parts of the country, including New York, are working through thousands of properties "underwater" or in danger of foreclosure.

Issue Background

This tax provision protects underwater homeowners from incurring a large tax bill on phantom income in connection with a workout or a short-sale. Since 2007, this tax relief has strengthened individual communities and the broader economy as more distressed homeowners were offered the flexibility to responsibly address an underwater mortgage.

In 2015 the Protecting American Taxpayers from Tax Hike extenders package contained an extension of this mortgage debt cancellation tax provision covering tax years 2015 and 2016.

It's important the federal government do all that it can to minimize hardships for households in distress that are in danger of losing their homes by preventing these households from incurring additional burdens by being taxes on cancelled "phantom" income.

Why is Mortgage Debt Cancellation So Important to New Yorkers

Mortgage debt forgiveness is especially important in New York due to the length of the state's judicial residential foreclosure process. According to the New York State Comptroller, New York has the fourth-slowest foreclosure process in the nation, averaging 2.5 years per property. Mortgage debt forgiveness helps financially-stressed homeowners avoid bankruptcy and gives individuals options rather than entering the lengthy New York foreclosure process.

As of Q3 2015, New York had the second-highest home foreclosure inventory in the nation. Statewide, 1 in 21 home mortgages (4.77 percent) are in foreclosure. Any lapse or elimination of the Mortgage Debt Forgiveness provisions would see an even greater rise in foreclosures or bankruptcies throughout the state and would have devastating effects on already financially-stressed individuals, families and our state's economy.

Opposing Viewpoints

Opponents of NAR policy believe that a principal residence is a personal expense. Because the tax law does not allow for the deduction of personal expenses, tax relief from cancellation of debt on a personal residence is inappropriate, unless the homeowner is insolvent or bankrupt. Moreover, some opponents of tax relief in these situations believe it is wrong to "reward" borrowers who took on mortgages in excess of what they could afford by giving them tax relief from the consequences.

Legislative Status/Outlook

While there is bipartisan interest in some of the tax provisions now set to expire at the end of 2016, including the mortgage debt tax relief provision, it is somewhat unlikely that the provisions will be acted upon before they actually expire. Congress has, over the past several years, gotten into a habit of allowing the expiring provisions to actually expire before acting on them, and then when they are extended, it has been on a retroactive basis. But with few large-scale provisions now set to expire, most observers believe that extending the remaining expiring provisions will be even harder than it has been in recent years.

Open Access to Condominiums — Often the Most Affordable Homeownership Option; and Make Other Needed Housing Reforms

Congressional Action Needed

Send H.R. 3700, the "Housing Opportunity Through Modernization Act" to the President's desk. H.R. 3700 makes much needed reforms to the Federal Housing Administration (FHA) condominium loan program, federal assisted housing programs and Rural Housing Service loan programs.

Congressional Actions To Date

- H.R. 3700, introduced by Reps. Luetkemeyer (R-MO) and Cleaver (D-MO) passed the House by a vote of 427-0.
- There is no companion bill in the Senate, and no time for a bill to move through the regular process in this short election year.

What To Tell Your Representatives And Senators

- Thank your Representative for supporting H.R. 3700. The bill passed unanimously by a vote of 427-0.
- Urge your Senator to bring H.R. 3700 to the Floor of the Senate.

Issue Background

Many first-time homebuyers turn to condominiums as a more affordable option for homeownership. Condominiums make up about 9 percent of the housing stock, but their share of the FHA portfolio is only 4.1 percent. Current FHA condo lending rules restrict the number of condos available to FHA homebuyers, thus limiting the often most affordable, appropriate choice for many families. Changes to the processing of rural housing loans will improve access for deserving families, and reforms to federally assisted housing programs will ease burdens for landlords and improve access for residents.

H.R. 3700, "Housing Opportunity Through Modernization Act"

- Solves a number of concerns regarding FHA's condo rules:
  - Reduces the FHA condo owner occupancy ratio to 35 percent, unless FHA takes alternative action to reduce the ratio below its current level.
  - Directs FHA to streamline the condo recertification process.
  - Provides more flexibility for mixed use buildings.
  - Mirrors the Federal Housing Finance Agency's (FHFA) rules regarding private transfer fees for FHA condo lending.
- Provides permanent authority for direct endorsement for approved lenders to approve Rural Housing Service (RHS) loans.
- Makes reforms to federally assisted housing programs to streamline the programs.

FHA's Restrictions are Limiting Access to One of the More Affordable Homeownership Options

- Condominiums are often the first step on the housing ladder for first-time homebuyers.
- They also can be the most affordable and desirable option for single people, young families, urban dwellers, and older people looking to downsize.
- Currently less than 10 percent of all condos have FHA approval (according to the Community Associations Institute).

FHA's Condo Rules are Too Restrictive

- Current FHA rules require that no less than 50 percent of condo units are owner occupied. Freddie Mac and Fannie Mae have no such restriction when the home is being purchased as a principal residence, which all FHA borrowers are required to be. Since FHA reviews the financial health and reserves of the property to ensure they meet FHA requirements, owner occupancy ratios should be irrelevant.
- FHA limits commercial space to 25 percent of the property. The popularity of "town center" developments and multiuse properties make many newer buildings ineligible for FHA. Under the current rules, parking garages count as commercial space and can greatly skew the ratio. FHA does allow waivers, but they are rarely granted.
- FHA prohibits any kind of transfer fee — even those that benefit the homeowner. Freddie Mac's and Fannie Mae's regulator, the Federal Housing Finance Agency, conducted a rule making on this very issue several years ago and determined that transfer fees that benefit the homeowner are acceptable.

Rural Housing Loans Should be Streamlined

- Many rural Americans rely on the 502 Rural Housing Guaranteed Loan Program to provide them with access to affordable mortgage credit.
- These loans are self-funded and budget neutral, meaning the fees paid by borrowers fully pay for the program.
- Today, every guaranteed loan must be individually reviewed by a staffer at the Rural Housing Service. FHA and VA's mortgage insurance programs utilize approved private lenders for direct endorsement.

Federally Assisted Housing Needs Reform

- Easing burdens on federally assisted property owners, managers and housing authorities will improve access to affordable rental housing.
- Nearly all the provisions in the bill have been supported in Congress but haven't become law.

Opposing Viewpoints

- H.R. 3700 passed the House 427-0 with NO OBJECTIONS. No individuals, think tanks, or groups have expressed concern with the legislation.

Don't Raise the Cost of Homeownership

Congressional Action Needed

Ensure that qualified borrowers have access to safe and affordable mortgage financing and enact legislation that prohibits guarantee fees (G-fees) from being extended, increased and diverted for unrelated government spending.

Congressional Actions To Date

- No legislation has been introduced yet this year that would increase or use G-fees as a revenue source for non-housing projects.
- H.R. 4893, the "Risk Management and Homeownership Stability Act," introduced by Reps. Sanford (R-SC), Sherman (D-CA) and Neugebauer (R-TX), amends the Congressional Budget and Impoundment Control Act of 1974 to prohibit the use of G-fees as offsets.
- Sens. Crapo (R-ID) and Warner (D-VA) have introduced companion legislation, S. 752. This legislation would establish a scorekeeping rule to ensure that increases in G-fees shall not be used to offset provisions that increase the deficit.
- On December 4, 2015, President Obama signed into law a transportation reauthorization bill, which removed a provision passed by the U.S. Senate to extend an increase in the average G-fee that was enacted in 2011.

What To Tell Your Representatives And Senators

- Senate: Cosponsor and support passage of S. 752, introduced by Sens. Crapo (R-ID) and Warner (D-VA).
- House: Cosponsor and support passage of H.R. 4893, the "Risk Management and Homeownership Stability Act," introduced by Reps. Sanford (R-SC), Sherman (D-CA) and Neugebauer (R-TX).
- Any extension of the G-fee increase will maintain the higher cost of a mortgage credit and continue to cause homebuyers to reconsider or delay a potential home purchase or refinance.
- The market has stabilized, but sales volumes remain sluggish by historical standards, weighing on an important engine for the economy. A punitive fee that does not support the safety and soundness of the housing finance sector will likely hinder improvement.

Issue Background

- G-fees are charged by Fannie Mae and Freddie Mac to lenders for bundling, selling, and guaranteeing the payment of principal and interest on their Mortgage Backed Securities (MBS). These fees are passed on to consumers, typically in the form of higher mortgage rates.
- Most of the guarantee fee covers projected credit losses from borrower defaults over the life of the loans, administrative costs, and a return on capital.

Opposing Viewpoints

- Some lawmakers believe revenue, regardless of where it is generated from, is needed in order to keep the government fiscally sound and lower the budget deficit.
- Opponents believe Fannie Mae and Freddie Mac should not be involved in the mortgage market. Rather, they believe free market competition will provide better pricing and access to credit for consumers and businesses.

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Provide Private Flood Insurance Options

Congressional Action Needed

Senate consideration and passage of H.R. 2901, the "Flood Insurance Market Parity and Modernization Act" sponsored by Reps. Dennis Ross (R-FL) and Patrick Murphy (D-FL).

Congressional Actions To Date

- H.R. 2901 passed the House of Representatives by an overwhelming bipartisan vote of 419-0.
- No action to date in the Senate.

What To Tell Your Representatives and Senators

- Thank your Representative for supporting H.R. 2901.
- Urge your Senator to bring up and pass the House bill.

Issue Background

Federal law requires that property owners with federally related mortgages buy and maintain a minimum amount of flood insurance coverage for properties located in Special Flood Hazard Areas. Currently, property owners may not satisfy this "continuous coverage" requirement with some private market alternatives to the National Flood Insurance Program (NFIP). If a policyholder leaves the NFIP for one of these market options, they could jeopardize their grandfathered status and face substantial rate increases should they later return to the NFIP.

H.R. 2901 would:

- Clarify that property owners may satisfy the mandatory purchase requirement with either an NFIP policy or private market coverage that meets state law.
- Ensure that consumers can move freely between the NFIP and private coverage without penalty.
- Preserve the NFIP as a viable choice, keeping homeowners from becoming stranded should private insurance options contract or become more expensive after major floods.
- Maintain important consumer disclosures, as well as Fannie Mae/ Freddie Mac's ability to examine the financial solvency of private insurers and protect taxpayers.

Current law limits the flood insurance options available to property owners

- Right now, NFIP is the only de facto source of the flood insurance coverage required for properties with federally-backed mortgages.
- The private market may be able to offer comparable coverage at lower cost than the NFIP.
- Consumers need options and a competitive market for well-priced flood insurance coverage that meets their individual needs.

Expanding choice is a good first step toward a comprehensive reauthorization of the National Flood Insurance Program

- NFIP is up for reauthorization in 2017.
- This bill is an incremental step in the meantime to offer additional options to property owners.
- A strong NFIP coupled with a consumer-friendly private insurance market will provide property owners with the choices they demand.

Opposing Viewpoints

- Opponents have expressed concern that private insurers could offer less coverage than NFIP.
- Another concern raised focuses on the ability of consumers to seek redress from non-admitted or surplus lines insurers.

Real Estate-Related Tax Policies are Vital to the Economy

Congressional Action Needed

- Congress is unlikely to pass tax reform in 2016. However, lawmakers and their staffs are already gearing up with plans and ideas for next year when we will have a new president and possibly a shift in control of the Senate and/or House.
- Now is the time for Members of Congress and their staffs to be reminded how vital real estate tax provisions are to the housing market and the U.S. economy. Reform ideas that repeal or weaken tax provisions that encourage homeownership must be rejected. We need tax reform, but it must first do no harm.

Congressional Actions To Date

- Though no viable tax reform legislation has been introduced in the current Congress, House and Senate leaders on both sides of the aisle are developing plans to move their vision of tax reform next year, when political conditions are likely to be more favorable.

What To Tell Your Representatives And Senators

- **Mortgage Interest Deduction (MID):** Since the inception of the modern income tax, the MID has made homeownership possible for millions of American families, while strengthening society. *Reject tax reform plans that eliminate or marginalize the mortgage interest deduction for primary and second homes.*
- **Property Tax Deduction:** Some reform plans would repeal the deduction for property taxes paid. This idea would not only raise taxes on millions of middle-income Americans, but would also put homeownership out of reach for many who want to buy their first home. *Say no to tax reform that repeals the property tax deduction.*
- **Like-Kind Exchanges:** For nearly a century, the Section 1031 provision has encouraged growth by permitting real estate held for investment to be exchanged for property of a like-kind on a tax-deferred basis. Exchanges are essential to the commercial real estate sector and to the economy. If repealed, fewer redevelopment projects will go forward, and fewer jobs will be created. The like-kind exchange provision provides liquidity to an illiquid asset. *Repealing it would harm economic growth.*

Issue Background

While tax reform will most likely not be enacted this year, ideas being discussed now by House and Senate tax leaders will be the ones in play when political conditions line up in favor of moving tax reform. Members of Congress need to be reminded *now* that tax change ideas that harm real estate are non-starters.

Housing Tax Incentives Must Be Preserved

- More than 75 percent of homeowners utilize the mortgage interest deduction at some point over the period they own a home.
- Of all those claiming MID, 88 percent earn less than $200,000; limiting or repealing current housing tax incentives would hurt the housing sector and unfairly harm homeowners, who already pay 80–90 percent of all federal income tax.
- For many homeowners, the property taxes deduction is substantial, and one that continues long after a mortgage is paid off. Repealing property tax deductions would unfairly cause double taxation of the same income.
- The value of both the mortgage interest and property tax deductions is imbedded into house prices. Eliminating the MID alone would cause on average an 11 percent drop in home values; decreasing the deduction, even for a limited group, would compress the value of *all* homes.
- Limiting the tax incentives of homeownership would weaken families, society, and undermine the American Dream.

Like-Kind Exchanges Must Be Retained

- Repealing the like-kind exchange provision would be counter-productive to economic growth and job creation with little gain in revenue.
- Two separate tax reform plans by former tax committee chairmen (Baucus and Camp) proposed the repeal of Section 1031, and the President's budget again this year advocated a major cutback. Members of Congress and their staffs must be educated on the importance of the like-kind exchange provision to their own states and districts.

Opposing Viewpoints

- Critics will argue that a simpler tax code with lower rates is better for housing than the current system, and the MID most benefits high-income homeowners who do not need help buying a home.
- Deductions for property taxes subsidize high taxes and encourage bloated governments.
- Critics argue the like-kind exchange provision is a loophole that exclusively benefits those fortunate enough to own investment property.

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