



# 2010 NAHB Legislative Conference

## National Association of Home Builders

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**2010**  
**NAHB**  
**Legislative**  
**Conference**

# State of the Housing Economy

**H**OME BUILDING and the national economy are inextricably entwined. Growth in the national economy and employment provide the basis, along with the income, for households to purchase a house. At the same time, home building stimulates the economy through the resulting broad-based expenditures on labor, materials and services embodied in building and occupying homes. Recessions lead to postponed demand for housing. At the same time, recessions result in lower interest rates, which typically help unleash the pent up demand for housing. This in turn gives a boost to a flagging economy, helping to pull the nation out of recession. Housing represents a large component of the nation's output and an even larger share when growing out of a recession. The impact extends beyond mere construction into manufacturing components, furnishing new homes and spreading the income earned from the many facets of home building. Now is the time to recognize the vital part housing plays in the overall economy.

**SINGLE-FAMILY HOUSING STARTS FELL FROM THEIR PEAK OF 1.7 MILLION IN JANUARY 2005 TO A RECORD LOW OF 445,000 IN 2009: A 74 PERCENT DECLINE. AS OF MARCH 2010, OVER 1.3 MILLION JOBS HAVE BEEN LOST IN RESIDENTIAL CONSTRUCTION SINCE THE PEAK IN RESIDENTIAL CONSTRUCTION EMPLOYMENT IN APRIL 2006. THIS SEVERE CONTRACTION FROM AN UNSUSTAINABLE PRODUCTION LEVEL HAS BEEN COMPOUNDED BY A BREAKDOWN IN CREDIT MARKETS AND A SEVERE NATIONAL RECESSION.**

Residential construction is a vital part of the U.S. economy. In the post World War II era, residential construction

has accounted for roughly 4.5 percent of gross domestic product (GDP). During the peak of the housing boom, in 2004 and 2005, residential construction accounted for over 5 percent of GDP. From 2006 through the first half of 2009, residential construction has been a drag on GDP growth, shaving off an average of almost 1 percent of growth each quarter. Starting in the second half of 2009, residential construction stopped pulling GDP growth down and returned to being a contributor to growth. That also marked the time when the national economy returned to a growth path.

But housing's impact is even larger when other parts of the economy directly affected by housing are taken into account. Housing services (such as rent paid for apartments) contribute another 10 percent to GDP. Further, sales of new and existing homes drive purchases of items such as furniture and appliances. Thus, a conservative estimate of the impact of housing on the national economy is on the order of 16 percent of GDP.

The importance of housing to a local economy is evident from the large ripple effects. Construction workers spend



their income locally; building supply companies expand, hire more employees, and pay additional taxes as they sell to home builders; new residents of the homes spend some of their income locally, further stimulating local businesses.

The National Association of Home Builders Local Economic Impact Model estimates these benefits. The model captures the effect of the construction activity itself, the impacts that occur when income earned from construction activity is spent, and the impact that occurs when the new home is occupied.

In the year of construction, building 100 single-family homes in a typical U.S. metropolitan area creates \$21 million in local income, \$2.2 million in taxes and other revenue for local governments, and 324 local jobs. These impacts include the direct construction spending as well as the indirect ripple effect from workers and businesses spending their new incomes. Once built, the new residents' spending and the ripple impact from that spending increase economic activity \$3.1 million a year and increases local government taxes and revenues by \$743,000 per year.

For many, their housing choice is ownership, which has been a path to increased wealth for many Americans. The combination of the standard, amortized mortgage (whereby each payment reduces the outstanding loan amount) along with the slow, but steady appreciation in home values has translated into rising equity in the home. In the post World War II period, homeowners have seen the value of the equity in their homes increase in excess of 6.5 percent per year on average. As of the fourth quarter of 2009, Americans held \$6.3 trillion of equity in their homes (value of their homes minus mortgage debt they owed on those houses). Home equity is spread more evenly and across a larger share of Americans than any other form of wealth.

For some, their housing choice is renting. Mobility, freedom from caretaking and unexpected expenses, preferences for urban locations and lack of savings are a few reasons why renting makes more sense for some households. An adequate supply of all kinds of housing affordable to the cross section of incomes is a necessary component of every local economy and an absolute first priority for economic health.

Recognizing the importance of housing to the economy and to households, the US Congress has provided a number of preferences for housing. Consistent and affordable mortgage financing is supported by the Federal Housing Administration mortgage insurance, the Veterans Administration Guarantees, the Rural Housing Service programs and a secondary mortgage market. Affordable rents are supported through direct

payments to residents and rental property owners and through tax incentives to rental housing producers. The income tax rules provide support through itemized housing deductions and capital gains reduction for home owners. These preferences are a reflection of the importance housing possess in the American mind.

As housing recovers from the worst recession in the post World War II period, it faces significant headwinds. These include:

- ▶ difficulty in obtaining affordable mortgages despite low interest rates for all but those with the best credit ratings
- ▶ lenders curtailing funding of builder projects even with evidence of solid demand for those projects
- ▶ lenders turning builders' performing loans into non-performing loans by increasing required equity in projects and/or raising required monthly payments
- ▶ regulators putting pressure on banks to re-categorize performing loans as non-performing and to require greater equity from builders
- ▶ appraisers scuttling deals due to inappropriately low appraisals that do not properly adjust for sales of foreclosed properties and short sales, and
- ▶ continued competition from foreclosed properties and short sales.

At this point, the recovery in housing remains fragile, a clear risk to the national recovery. A vibrant, competitive housing industry is key to national economic health, growth in employment, and income growth. It is also a necessity to housing our growing population.

**NOW IS THE TIME FOR CONGRESS TO REAFFIRM THE VITAL PART HOUSING PLAYS IN THE OVERALL ECONOMY AND ITS CRITICAL ROLE IN A NATIONAL ECONOMIC RECOVERY.**

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# Addressing the Housing Production Credit Crisis

## Background

**H**OME BUILDERS CONTINUE to experience a significant adverse shift in terms and availability on land acquisition, land development and home construction (AD&C) loans, and builders with outstanding loans are facing mounting challenges. Lenders 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. Lenders often cite regulatory requirements or examiner pressure on banks to shrink their AD&C loan portfolios as reasons for their actions.

While federal bank regulators maintain that they are not encouraging institutions to stop making loans or to indiscriminately liquidate outstanding loans, reports from NAHB members in a number of different geographies suggest that bank examiners in the field are adopting a significantly more aggressive posture. Moreover, some institutions appear to be overhauling and downsizing portfolios independent of regulator/examiner pressure.

Reappraisals of performing loans are reducing the value of the collateral and forcing borrowers to suddenly come up with large amounts of cash. Many borrowers are solvent and making payments on their AD&C

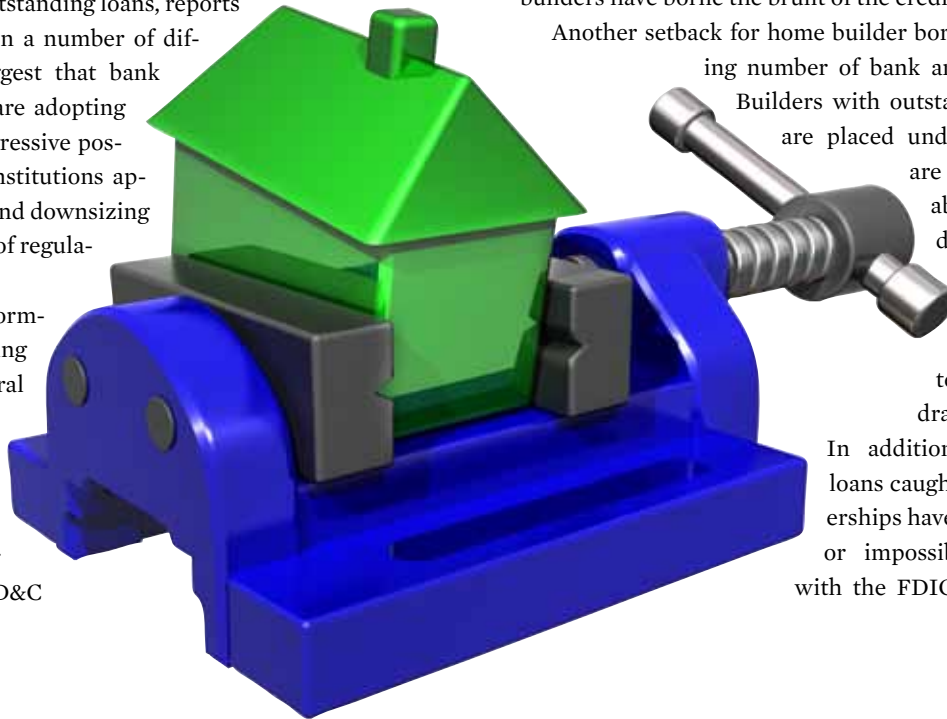
loans, but the cash call is impairing what was previously a good loan. Since most home building companies are small businesses and do not have the capacity to meet significant equity calls, the result is often foreclosure on a loan that had been performing and, in some cases, forcing builders into insolvency. In almost every case the institution would be better off working with the borrower to extend the loan, rather than shutting off credit.

Portfolio lenders—commercial banks and thrifts—remain the predominant source of residential AD&C financing, accounting for over 90 percent of originations. There are no alternative sources of housing production credit for most firms in the home building industry. Thus, smaller builders have borne the brunt of the credit retraction.

Another setback for home builder borrowers is the rising number of bank and thrift failures.

Builders with outstanding loans that are placed under FDIC control are frequently unable to contact a decision maker to deal with routine, but time-sensitive, matters related to loan draws or extensions.

In addition, builders with loans caught in FDIC receiverships have found it difficult or impossible to negotiate with the FDIC on the disposi-



tion of their credit. Builder loans have been sold to other investors at prices well below what the builder was willing to offer.

**THE PROBLEMS FACING NAHB'S MEMBERS PARALLEL THOSE IN THE HOME MORTGAGE MARKET. HOME BUILDERS ARE HAVING EXTREME DIFFICULTY IN OBTAINING CREDIT FOR VIABLE PROJECTS. BUILDERS WITH OUTSTANDING CONSTRUCTION AND DEVELOPMENT LOANS ARE EXPERIENCING INTENSE PRESSURE AS THE RESULT OF REQUIREMENTS FOR SIGNIFICANT ADDITIONAL EQUITY, DENIALS ON LOAN EXTENSIONS, AND DEMANDS FOR IMMEDIATE REPAYMENT. THE CREDIT WINDOW SEEMS TO HAVE BEEN SLAMMED SHUT FOR BUILDERS ALL OVER THE COUNTRY.**

These trends are supported by NAHB's member surveys of the availability and cost of AD&C credit. Our latest survey shows that conditions have continued to deteriorate through the fourth quarter of 2009:

- ▶ Well over half of respondents to this survey have reported that the availability of credit for AD&C loans has worsened every quarter for nine quarters in a row, from the fourth quarter of 2007 through the fourth quarter of 2009
- ▶ The nine consecutive quarters of continuing decline in loan availability has been true for all types of AD&C loans: land acquisition, land development, single-family construction, and multifamily construction.
- ▶ Three quarters of the respondents who reported that conditions had become even worse in the fourth quarter of 2009 stated that lenders are simply not making new AD&C loans.

## Solutions

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.

Regulators should issue more flexible guidelines to encourage banks to maintain funding for residential AD&C loans in good standing that fall below their underlying value, and should follow up to ensure that bank examiners are appropriately implementing regulatory guidance.

In the vast majority of cases, lenders would be better off working with their builder/developer borrowers to modify or extend loans, rather than requiring additional equity or shutting off credit. This is a lesson that has been demonstrated by holders and servicers of home mortgages who now increasingly attempt to work out a mutually beneficial solution with struggling borrowers. The alternative is to incur foreclosure and real estate owned expenses, only to sell the property for cents on the dollar.

NAHB is urging regulators to direct bank examiners to permit lenders to work with residential construction borrowers who have loans in good standing by providing flexibility on re-appraisals, loan modifications and perhaps forbearance, to give builders sufficient time to complete projects and sell their inventory.

## Recommendations

- ▶ **Regulators should allow lenders to extend credit for viable new housing production projects, even if the institution's concentration of real estate loans is above regulatory guidelines.**
- ▶ **Bank examiners and lenders should provide leeway to residential construction borrowers who have loans in good standing by providing flexibility on re-appraisals and loan modifications on loans to give builders time to complete and sell their inventory.**
- ▶ **Send letter to federal regulators seeking regulatory relief for the housing production credit crisis.**

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# Energy Efficiency Retrofit Incentives

## Background

LAST DECEMBER, PRESIDENT OBAMA proposed an initiative to provide consumers with rebates for undertaking energy efficiency upgrades to existing homes. The plan, originally termed “Cash for Caulkers,” is now formally referred to as Home Star. With unemployment near 27% in the home building industry, NAHB is pleased to see a plan that is designed to create jobs and also provide consumers with efficiency incentives to improve older, less-efficient homes and buildings. The Home Star proposal has

the support of a variety of building material suppliers, environmentalists, trade unions, and major retail outlets. NAHB supports the concept and agrees that retrofitting existing homes for efficiency improvements is the right approach to deliver meaningful energy savings in the residential sector.

**UPGRADING OLDER HOMES AND BUILDINGS, IN LIEU OF MANDATING AGGRESSIVE AND UNREALISTIC ENERGY CODES FOR NEW CONSTRUCTION, IS SOUND PUBLIC POLICY. OVER 17% OF ALL THE ENERGY CONSUMED IN THE U.S. IS USED BY THE 130 MILLION EXISTING HOMES. NAHB BELIEVES THAT PROVIDING RETROFIT INCENTIVES TO CONSUMERS IS THE ONLY WAY TO TRULY ADDRESS THE BIGGEST ENERGY PROBLEM IN THE HOUSING INDUSTRY: OLDER, LESS EFFICIENT HOUSING.**

Congress has been shaping the President’s proposal into legislation for months and early drafts did not appear to allow broad and equal access to retrofit work opportunities for all qualified, highly-trained contractors. Some drafts also appeared to potentially exclude independent contractors and named only a few groups to qualify as “certified workforce” programs—none of which are traditionally used by the residential construction industry. NAHB has been working to offer input and suggested improvements that would expand the legislation to include greater consideration of legitimate workforce programs, like the Home Builders Institute (HBI), and remove language that could limit participation. Additionally, NAHB is concerned that



the overall success of Home Star could be blunted by EPA's inability to certify enough contractors under the new "EPA Lead: Renovation, Repair and Painting" rule, covering renovation work in pre-1978 homes, effective April 22, 2010.

## Solutions

Congress must ensure that the Home Star legislation is crafted to provide equal access to all highly-trained and qualified contractors. NAHB also asked Congress to remove language that would potentially exclude work by independent contractors. Both the House and Senate are working on slightly different versions of the legislation, and NAHB believes there are opportunities to make changes that could expand the legislation to include wider consideration of legitimate workforce programs and eligible contractors, like HBI, the largest Job Corps partner with Department of Labor, and the workforce arm of the residential construction industry. Congress should include HBI as a "certified workforce" program, and remove any language that requires pre-qualification of contractors based on "proper employee classification" status.

Congress should support retrofitting older homes via consumer incentives, which has the potential to create thousands of jobs and save energy. However, Congress must also recognize that retrofit work in the least efficient housing stock—i.e., pre-1978 homes—is also subject to EPA's new lead paint rule. EPA currently reports having about 100,000 certified contractors to serve the entire country. This is inadequate in terms of the demand for renovations created by the multi-billion dollar Home Star proposal. EPA waited far too long to start approving training programs and now cannot ensure sufficient compliance with its own rule; a problem only magnified by thousands of new contractors expected to work under the proposed Home Star program. Congress should ask the Obama Administration, the biggest proponent of the Home Star program, to resolve the conflict between the lead rule and the Home Star program. Simply, there are not enough contractors certified to comply with EPA's lead rule and undertake retrofit work on the least-efficient housing stock: pre-1978 homes.

## Recommendations

- ▶ **Support retrofit incentives for consumers in existing homes to improve energy efficiency to create jobs and save energy in the housing sector.**
- ▶ **Support the inclusion of the Home Builders Institute (HBI) as a legitimate workforce development program under "certified workforce" section of Home Star legislation.**
- ▶ **Support the removal of any language that precludes access by independent contractors or mandates "proper employee classification" for work on Home Star projects.**
- ▶ **Urge the Obama Administration to intervene with the implementation of EPA's Lead Renovation Repair and Painting Rule since EPA has not certified enough contractors to legally retrofit pre-1978 homes.**

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# Targeting Small Construction Companies (Merkley Amendment)

## Background

IN THE DAYS LEADING UP TO the Christmas Eve passage of the first round of health care legislation in the Senate, Senator Jeff Merkley (D-OR) inserted a provision into the final Manager's Amendment to the bill that would have singled out the construction industry from the broader small business exemption in the legislation. While every other U.S. small business would have had a 50-employee threshold exemption from the employer mandates in the bill, the Merkley Amendment would have changed that threshold to a mere 5-employee threshold only for "any employer the substantial annual gross receipts of which are attributable to the construction industry."

**THIS NARROWLY FOCUSED PROVISION WAS AN UNPRECEDENTED ASSAULT ON THE CONSTRUCTION INDUSTRY. EMPLOYER BENEFIT PACKAGES REFLECT THE REALITY OF THEIR BUSINESS MODELS, AND CONSTRUCTION INDUSTRY EMPLOYERS PROUDLY OFFER THEIR EMPLOYEES THE BEST HEALTH INSURANCE COVERAGE THAT THEY CAN ACCESS AND AFFORD.**

It is unreasonable to presume that some small business owners can bear the increased cost of these new benefits simply because Congress mandates that they do so.

Additionally, the lack of a clear definition of the term "construction employer" in statute or regulation could have meant that this provision would impact any small supplier, distributor or manufacturer whose business is dependent on the construction industry.

The labor union proponents of this provision used the faulty logic that a mandate to provide health insurance would somehow "level the playing field" between non-union and union contractors. Unfortunately, this ignored the fact that the residential construction industry is largely non-unionized, and that open shop contractors, who employ 84% of the entire construction workforce according to the Bureau of Labor Statistics (BLS), are unable to enter into the same type of multi-employer health plans that are available to union contractors.

These plans exempt union contractors from the cumbersome web of state mandates that directly contribute to the skyrocketing costs of health insurance. NAHB has long advocated for the creation of insurance reforms and pooling arrangements that would allow small employers the same flexibility and choice that is currently enjoyed only by labor unions and large corporations.

Similarly, labor unions argued that the construction industry should be narrowly targeted because of a high rate of work-



place illnesses and injuries, ignoring the fact that construction employers already provide workers compensation insurance that covers all workplace injuries and illnesses, with no deductibles, co-pays or limits. The labor unions also ignored both the significant decline in workplace injuries over the past decade, and the BLS data showing the construction industry reporting fewer injuries and illnesses than the manufacturing, retail and health care sectors. Further, the same BLS data showed that employers with fewer than 50 employees have a lower rate of injury and illness than larger employers.

### Solutions

NAHB successfully stripped the Merkley amendment from the underlying health care legislation/law through the use of a provision in the Reconciliation bill. However, as the health care debate wound down, the labor union community—upset at the loss of a key issue for them regarding the taxation of “Cadillac” plans, as well as the impending loss of the Merkley amendment due to NAHB’s efforts—made it clear to the White House that they would seek to re-insert the Merkley provision into the health care law using another, perhaps unrelated, piece of legislation moving through Congress. Because the labor unions will vigorously renew their effort to unfairly burden the construction industry with the Merkley provision, NAHB must remain vigilant to ensure that the construction industry is not targeted again.

### Recommendations

- ▶ **Lawmakers in the House and Senate must continue to oppose any effort to insert any provision into any legislation that would single out the construction industry for a different small business exemption than that which is enjoyed by every other small business under the new health care law.**

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