



### **The Obama Stimulus Package and 2010 Budget: Promising but With Few Particulars for Homebuilders?**

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In recent weeks, there has been good news of sorts for U.S. homebuilders. The Commerce Department noted a rebound in new home sales in February, and the National Association of Realtors reported that previously owned home sales rose 5.1% in February in contrast to a decline in January sales of 5%. Despite the good news, homebuilders continue to experience one of the worst slumps since 1963, with housing starts reaching an all time low. Business Week quoted David Restler, chief U.S. Economist at Nomura Securities as stating that the uptick in new home sales “is another faint, but nonetheless encouraging sign that the economic slide may be moderating.” In short, the patient is still getting sick, but at a slower pace.

In spite of such acknowledgement of the dire straits in which U.S. homebuilders, homebuyers and homeowners find themselves, specific governmental response to address the crisis in the homebuilding industry has been limited. The American Recovery and Reinvestment Act of 2009 – commonly referred to as the “Stimulus Plan” – was signed into law in early February 2009. Homebuilders looked to two specific provisions to jump-start the moribund housing industry – the home buyer tax credit and the Net Operating Loss Carry Back. However, one was cut back and the other cut out.

#### **The Home Buyer Tax Credit**

Homebuilders and consumer groups alike lobbied for a tax credit of \$15,000 for homebuyers of new and/or existing homes to be included in the Stimulus Plan, seeking to extend and expand the prior homebuyer tax credit program enacted in July 2008, which had expired. However, by the time that President Obama signed the Stimulus Plan into law, this tax credit was reduced to a maximum of \$8,000 and limited to only qualified first-time buyers who would be purchasing a principal residence between January 1, 2009 and December 1, 2009. Other restrictions include: capping the credit at 10% of the home’s purchase price up to a maximum of \$8,000; restricting the tax credit to single taxpayers with incomes up to \$75,000 and married couples with income up to \$150,000; in the case of married couples, denying the tax credit if either owned a principal residence within the past three-year period; and requiring the residence to be used as a principal residence for at least three years in order to avoid recapture of the tax credit.

Despite its reduction both in dollar amount and application, some analysts have found “good news” in the fact that this tax credit is a true tax credit – a dollar for dollar reduction in tax liability that does not need to be repaid as was the tax credit enacted last year (in reality an interest-free loan with a 15-year repayment period.)

#### **Net Operating Loss Carryback (“NOLC”).**

The homebuilding industry was encouraged by the fact that President Obama’s 2010 Budget, on page 122, included a provision to “Expand the Net Operating Loss Carryback” under the section entitled “Tax cuts for businesses.” Rejected twice in 2008, and favored by Bush Republicans, Democrats in the House of Representatives failed to include President Obama’s tax provision in their budget proposal brought before Congress.

Lobbied for by homebuilder associations, the NOLC would have permitted businesses large and small to use recent losses to offset taxable profits from previous tax years. Homebuilders almost succeeded in having the NOLC included within the Stimulus Plan; Congress, however, ultimately limited this tax break to small businesses with gross receipts of \$15 million or less. It is rumored on Capital Hill that the NOLC provision may yet be considered by the Senate which could push for its inclusion in its final budget.

Some analysts question its effectiveness. As Mark Zandi, Chief Economist and co-founder of Moody’sEconomy.com testified before the House Budget Committee in January 2009: “the carry back of business losses helps cash strapped businesses, perhaps forestalling some cuts in investment in jobs, but it is unlikely to prompt much additional business expansion as it does not improve businesses prospects.” He did note, however, that it was a provision that could generate positive political capital in expanding political support for the Stimulus Plan, which in itself was a much needed “vital boost to the flagging economy.” Other analysts have agreed that if the economy shows signs of improvement, support for the NOLC will politically weaken; only if the economy declines will the NOLC be seriously considered for application to all businesses.

#### **A Boost for Small Businesses**

Under the Stimulus Plan and the President’s Budget, small businesses may be the ultimate beneficiaries of the provisions pushed for by the homebuilder’s trade associations. “The new net operating loss provisions could throw a lifeline to struggling small businesses providing them with a quick infusion of cash. We want to make it as easy as possible for small businesses to take advantage of these key tax benefits,” stated IRS Commissioner Doug Shulman.

The President’s Budget contains a number of provisions to help small businesses, including the elimination of the capital gains tax on small businesses starting in year 2014 and extending until 2019. The Stimulus Plan provides for deductions to specifically assist small businesses - - such as raising the deduction limit from \$128,000 to \$250,000 for certain qualified plant or equipment purchases that can be written off.

With the Stimulus Plan and the President’s Budget (as marked up by the House) homebuilders did not receive “hoped for” assistance from the federal government in the form of homebuyer tax credits or the net operating loss carryback tax provision. What is to be “hoped for” now is that improvements to other parts of the economy will stem job losses, create new employment, improve credit and restore consumer confidence such that homebuying returns as a realistic and attainable pursuit of the American Dream.