COMMERCIAL Leg/Reg UPDATE

National Association of REALTORS®

Welcome to the March/April issue of the Commercial Leg/Reg Update – an e-update for the National Association of REALTORS® Commercial Legislative/Regulatory Subcommittee. If you have any questions or comments related to the subject matter below, please contact Lisa Brechtel at 202.383.1090 or lbrechtel@realtors.org.

TALF Update

Treasury's announcement to expand the initial reach of the Term Asset-Backed Loan Facility (TALF) program to include CMBS was widely expected to kick start lending and stabilize the commercial credit markets. Nevertheless, the response from the investor community has been tepid. Under the current structure of the TALF program, on a fixed day each month ("subscription date") borrowers are able to submit the requisite information to the Federal Reserve Bank of New York and request one or more three-year TALF loans under the terms of the TALF program. For the last round of funding, the Federal Reserve Bank of New York lent just $1.7 billion — dramatically less than the $4.7 billion loaned in its first round in March.

As Treasury and Fed officials continue to work through operational details of the expanded TALF program, a number of key commercial real estate groups are asking for the TALF loan terms to be longer than the three years provided under the initial phase of the program.

The TALF program (as well as the PPIP) will be discussed in greater detail as an agenda item for the upcoming Subcommittee meeting during NAR's Mid-year Legislative Meeting (see below for meeting information and "Talking Points").

Expansion of TALF for Legacy Securities

As a further measure to address the problem of banks' toxic assets, the Treasury and the Federal Reserve have created a lending program that is targeted at the broken market for "legacy" securities tied to residential real estate, commercial real estate, and consumer credit. The intention is to incorporate this program into the previously announced TALF, which may total as much as $1 trillion. Through this expansion, non-recourse loans will be made available to investors to fund purchases of legacy securitization assets. Eligible assets are expected to include certain non-agency AAA rated residential mortgage-backed securities ("RMBS"), commercial mortgage-back securities ("CMBS") and ABS. Borrowers will need to meet certain eligibility criteria. Detailed terms of the program (lending rates, loan sizes, etc) have not yet been released. As with securitizations backed by new originations of consumer and business credit already included in the TALF, the provision of leverage through this program should give investors greater confidence to purchase these assets, thus increasing market liquidity.

PPIP

As part of the Financial Stability Plan, Treasury also recently unveiled a new "Public Private Investment Program (PPIP)." The PPIP will make targeted investments in multiple "Public Private Investment Funds" (PPIFs) that will purchase legacy real estate-related assets (http://www.treas.gov/press/releases/reports/ppip_whitepaper_032309.pdf)

The Treasury, utilizing funds from the original $700 billion Troubled Asset Relief Plan (TARP), will fund the PPIP. The PPIP will generate $500 billion in purchasing power to buy legacy assets – with the potential to expand to $1 trillion over time. The TARP funds from Treasury will be used to provide equity capital for new investment funds, matched with investments from private investors such as private equity and hedge funds. That public and private equity would be leveraged with credit from the Federal Deposit Insurance Corporation (FDIC), in the case of loan purchases, and the Federal Reserve's TALF program, in the case of securities.

Mark-to-Market

The mark-to-market rules have prompted a groundswell of complaints from commercial real estate investors and lenders who say that the accounting policy has resulted in the devaluation of performing assets and forced companies to value the assets at fire-sale prices. Federal Accounting Standards Board (FASB) met on Tuesday, March 17th, and approved the issuance of two proposed staff positions (FSPs) -

1. Proposed FAS 157-e, *Determining Whether a Market Is Not Active and a Transaction Is Not Distressed*

2. Proposed FSP FAS 115-a, FAS 124-a, and EITF 99-20-b, *Recognition and Presentation of Other-Than-Temporary Impairments*

On March 31st, a letter was submitted by NAR President Charles McMillan to the FASB in support of its draft guidelines to provide clarity and guidance to address problems with "mark-to-market" accounting. Marking the value of securities to market when the markets are dysfunctional has severely impaired liquidity in the commercial and residential mortgage markets, without accurately reflecting the value of the securities. The "FSPs" were adopted by the Financial Accounting Standards Board (FASB) on April 2, and take effect for earnings reports filed at the end of June.

Last week, the Public Company Accounting Oversight Board (PCAOB) issued a Staff Audit Practice Alert to inform auditors about the potential implications of the new accounting rules recently adopted by FASB. "This alert is intended to remind auditors of their responsibilities in conducting reviews of interim financial information and annual audits in light of the new FSPs related to fair value measurements and other-than-temporary impairments. The alert will be helpful to auditors as they conclude their work related to the first quarter of 2009 or prepare for the review of the second quarter and the audit of the financial statements, including the integrated audit," said Martin F. Baumann, Chief Auditor and Director of Professional Standards (see full PCAOB press release at http://www.pcaobus.org/News_and_Events/News/2009/04-21.aspx).

The mark-to-market issue will be discussed in greater detail as an agenda item for the upcoming Subcommittee meeting during NAR's Mid-year Legislative Meeting.

Energy Efficiency/Climate Change

The House Energy Committee has released and is working to approve draft climate legislation before Memorial Day. Among the many provisions, the draft bill would provide funding for states that adopt national building codes and Energy Star labels on homes and buildings. Other provisions of concern would bolster citizen lawsuits under the Clean Air Act. In the Senate, legislation is on dual tracks: the Energy Committee is currently drafting the energy provisions (including building codes and labeling); later, the Environment Committee is set to add a program to "cap and trade" carbon emissions.

Another issue for Congress is the scope of carbon regulations. The House bill would preempt EPA from regulating carbon emissions from multi-family and commercial buildings exceeding those of a 10- to 20-unit building. Without this preemption, under the letter of the law, those buildings could not be constructed or maintained without first obtaining EPA permits requiring best available pollution control technologies, such as solar panels or a high efficiency furnace/boiler. This is the result of a recent U.S. Supreme Court ruling that carbon dioxide is an air pollutant within the meaning of the Act.

NAR Mid-Year Meeting

The Subcommitte is scheduled to meet on Wednesday, May 13th during NAR's 2009 Midyear Legislative Meetings & Trade Expo. Please note that the meeting time has **CHANGED...**the meeting will now start at **8:30 a.m.** and run to 10:00 a.m. To help folks who need to be at the 10:30 a.m. RCA meeting at the Omni Shoreham, there will be a designated shuttle bus available following our meeting. The Commercial Leg/Reg Subcommittee meeting will be held in the Monroe Ballroom of the Hilton Washington Hotel. A copy of the agenda is attached below. Please use the following link to access a list of all important commercial events planned during MYM (http://www.realtor.org/commercial/commercial_midyear)

As you all know, the Talking Points that are prepared for Mid-Year meeting represent a snapshot of the most important issues for the association and will provide you with important information for your meetings on Capitol Hill. Please take a moment to visit NAR's list of MYM Talking Points and in particular, note the last Talking Point that is focused on Commercial Real Estate (http://www.realtor.org/government_affairs/gapublic/mym_home)

Finally, to inform and educate policymakers regarding the necessary solutions to bring stability to housing and real estate, NAR will be hosting a Real Estate Summit at the Midyear Meeting. The Summit will occur on Tuesday, May 12, 2009, 8:00am – 5:00pm, at the Marriott Wardman Park Hotel, Marriott Ballroom. The Summit will bring together representatives from academia, industry, economists and media to communicate ideas and perspectives aimed at addressing housing and real estate finance for the future. Commercial real estate will be incorporated in an afternoon panel. We hope to see you there!