Resolution No. 1

Date: January 18, 2010
City: Las Vegas, NV

NAHB Resolution

Title: Support for Multifamily Housing Tax Policy
Original Sponsor: NAHB Multifamily Council

WHEREAS, critical tax policy involving the multifamily housing sector is under debate in Congress;

WHEREAS, this debate involves the treatment of capital gain due to a carried interest and extension of the Low-Income Housing Tax Credit Exchange Program (TCEP);

WHEREAS, for more than 20 years, the Low-Income Housing Tax Credit ("housing credit") program has been the nation's most important affordable housing production program;

WHEREAS, the housing credit is a public/private partnership bringing together the federal government, state allocating agencies and the private sector;

WHEREAS, developers receive an allocation of housing credits from the allocating agency and then sell the credits to private investors in exchange for equity investment in affordable housing;

WHEREAS, due to the global financial crisis, many corporate investors have lost the ability to use the credit, therefore decreasing demand for housing credits and leaving many "shovel-ready" projects without the necessary equity financing to move forward;

WHEREAS, the exit of the Government Sponsored Enterprises Fannie Mae and Freddie Mac has resulted in the loss of two of the most important purchasers of tax credits;

WHEREAS, the loss of 40% or more of housing credit demand has resulted in lower tax credit prices and reduced equity investment in affordable housing projects;

WHEREAS, to support the housing credit market, Congress established the Tax Credit Exchange Program (TCEP) by the NAHB-supported *American Recovery and Reinvestment Act of 2009*;

WHEREAS, TCEP allows state housing agencies to exchange 100 percent of unused 2007 and 2008 LIHTC allocations and up to 40% of 2009 allocation at an 85% rate for funds that are distributed as subawards to increase equity investment in LIHTC projects;

WHEREAS, TCEP has played a critical role of providing resources to support the production of affordable housing, including the jobs and other economic impacts that result from such activity;

WHEREAS, TCEP expired at the end of 2009, putting nearly 23,000 jobs at risk in 2010;

WHEREAS, Congress recently introduced legislation to extend the TCEP program; however, a provision proposing to increase the taxation rate on carried interest was proposed as the revenue offset for this bill;

WHEREAS, the use of carried (or promoted) interest is a common and long-standing practice in the residential construction industry as a method of allocating economic risk and profit;

WHEREAS, such carried interests are, in general, characterized by the developer taking the role of general partner and being allocated a share of future profit in excess of their share of initial equity;

WHEREAS, such contract arrangements are an important method of attracting outside investors who act as limited partners;

WHEREAS, profit for multifamily development projects often takes the form of a capital gain because it is generated by the sale of capital asset (e.g. residential rental property);

WHEREAS, proposals have been introduced in Congress that would tax a capital gain due to a carried interest as ordinary income, thereby raising the effective tax rate by 133% in 2010, from 15% to 35%;

WHEREAS, IRS data shows there are over 2.5 million partnerships generating $450 billion in annual income, with 45% of these connected to the residential and commercial real estate sector;

WHEREAS, commonly accepted tax policy principles do not support arbitrarily changing the income character (e.g. capital gain) of profit to another form (i.e ordinary income);

WHEREAS, such proposals do not reflect the return to capital and entrepreneurship that are the hallmarks of a capital gain;

WHEREAS, some proposals would affect existing deals that were underwritten assuming current law, thereby placing an unfair and unexpected burden on the holders of a carried interest;

WHEREAS, the changing the tax treatment of carried interest would impede real estate development in the multifamily sector, particularly in difficult-to-develop areas and eliminate jobs;

WHEREAS, NAHB research has demonstrated that changing the tax treatment of carried interests would decrease property tax revenues for state and local governments by approximately $1.2 billion per year by decreasing commercial and multifamily property values, as well as eliminate more than 50,000 jobs in 2010 and 2011 due to reduced multifamily development;

NOW, THEREFORE, BE IT RESOLVED that the National Association of Home Builders urge Congress to extend the LIHTC Tax Credit Exchange Program and expand it to include disaster credits;

BE IT FURTHER RESOLVED that the National Association of Home Builders urge Congress to oppose modifying the present law tax treatment of carried interest thereby increasing the tax burden on real estate investments.

Board of Directors Action:	**APPROVED**
Executive Board Action:	Recommends Approval
Resolutions Committee Action:	Recommends Approval
Housing Finance Committee Action:	Recommends Approval
Federal Government Affairs Committee:	Recommends Approval
Commercial Builders Council Board of Trustees Action:	Recommends Approval
Multifamily Council Board of Trustees Action:	Recommends Approval
Multifamily Finance Subcommittee of the Housing Finance Committee Action:	Recommends Approval
Taxation Subcommittee of the Federal Government Affairs Committee Action:	Recommends Approval
Housing Credit Group Action:	Recommends Approval