



PORTAGE & SUMMIT COUNTIES

## Government Affairs Monthly E-Advocate

A Monthly E-mail Publication from the HBA serving Portage & Summit Counties

Volume 5, Issue 11

November 2007

### Mission Statement

**Leading** the building industry, **creating** neighborhoods, **providing** economic growth and **advancing** the education and professionalism of our members to benefit our community.

[www.akronhba.com](http://www.akronhba.com) / [www.lotfinder.org](http://www.lotfinder.org) / [www.akronhomeandflowershow.com](http://www.akronhomeandflowershow.com)  
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## YOUR HBA WORKING FOR YOU!



### Local News from Portage and Summit Counties Help Us Support YOUR Local HBA Builders-PAC

#### **Summit County Planning Commission will host a Public Hearing for the Proposed Amendments to the Subdivision Regulations – Mark Your Calendars!**

A public hearing has been scheduled on Thursday, December 13, 2007 at 3:00 p.m. in the County Council Chambers on the 7<sup>th</sup> floor of the Ohio Building, 175 South Main Street, Akron. The purpose of the hearing shall be for the Planning Commission to consider and approve or disapprove proposed amendments to the Summit County Subdivision Regulations.

The HBA staff and members have been involved in the proposed amendments from its inception this summer. We have met with the entire committee along with voicing our concerns with the Subdivision Administrator, Rob Henwood. Below are issues that were of concern to our members due to the additional costs they would incur.

- **Wetlands**  
Additional setback requirements should be included in density calculations and/or open space requirements at the local level. A request to add language to this effect into the Subdivision Regulations was made. = *Not a Subdivision Regulation Issue but a local zoning issue, we will discuss this in a new program the County is conducting for Zoning Inspectors.*
- **DOES Maintenance Bond**  
What is the rationale behind the increase from three to ten percent? = *The Department of Environmental Services will keep the bond at 3% and continue the 10% bond for pump stations.*

- **Recording the Final Plat**

When can a maintenance bond release be applied for? This should be included in the proposed text. Ensure enough time is allocated to allow for timely release of bond funds. = *Will keep current language in the Subdivision Regulations.*

- **Failure to Maintain Improvements**

During what time period can the discussed notice be sent? It is assumed that the intent is to have this section be applicable during the two-year effective period of the Maintenance Bond; however, this is not clearly stated. This section **should not** be applicable beyond the life of the Maintenance Bond. = *The Planning Department Staff will review this issue further.*

- **General Comments**

1. Landscape Plan submittal with the Preliminary Plan is premature. HBA members recommend submittal of a Landscape Plan concurrent with the Improvement Plans. = *Add a definition of schematic plan (what is the intent). The schematic landscape plan would be submitted with the preliminary plan.*
2. Performance bond funds to be withheld should correspond to the estimated construction costs of the remaining work to be completed. Additional funds for reasonable contingencies should be added to funds to be withheld to ensure that all remaining work can be completed should an applicant fail to do so. The current proposal of withholding 20% of construction costs could be cost prohibitive on smaller projects. = *The HBA continues to review this issue with Planning Department Staff.*

A copy of the Subdivision Regulations and the proposed amendments thereto may be accessed on the website of the County of Summit at <http://www.co.summit.oh.us/executive/planing.htm>.

**Elected officials affect many of the issues discussed in this newsletter.**

They need to know who we are and we need to support those who are willing to work with our industry. We do that through our *Builders-PAC!*

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## Builders PAC News

**Our 2007 Build-PAC Campaign Has Begun...  
We cannot do this without your support!**

**Strengthen Our Industry**

**Protect Your Interest**

**Support Pro Housing**

***Personal checks ONLY made payable to HBA Builders-PAC***

Platinum Club	\$500	Name _____
Gold Club	\$250	Address _____
Silver Club	\$150	City/State/Zip _____
Bronze Club	\$50	Phone _____
Other	\$_____	

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***We Support Builders-PAC... You Should Too... Here is what members are saying about PAC***

We all need to contribute to Builders-PAC in order to protect our rights and interests as builders. Builders-PAC works for you. It is Builders-PAC money, managed by HBA members, in order to protect home building. Don't leave your future success to others. Get involved!

The mission of Builders-PAC is to help elect pro-housing candidates and have access to elected officials. With next year's elections, the HBA is working very diligently to ensure that the communities we build in maintain pro-housing agendas. Without our help and contributions, we have no investment in our communities or our future success.

Our elected representatives on all levels, local, state and nationally, have more influence on our bottom line than we do ourselves. Builders-PAC is the best tool we have to influence the political process and to help ensure that those who enact legislation support the efforts of small business and understand the importance of housing in our society. Alone, we can do little. Together we make a difference!

Whether you are a builder, a subcontractor or a banker, it is important for all building industry related professions to pull together and support Builders-PAC. The strength of our associated industries is weakened without the financial political muscle that comes from all of us. **Support Builders-Pac today and send in your check!**

**For those that attended and donated items for our HBA Vegas Night –  
We Thank You for Supporting YOUR PAC!  
Please join us in our efforts**

## **How Builders-PAC has made a POSITIVE Impact for YOU?**

**Whether you are a Builder or an Associate Member,  
Here are some reasons why ALL HBA Members  
Should support YOUR local Builders-PAC.**

**Builders-PAC:** Is the HBA's Political Action Committee. Builders-PAC provides the local association with better accessibility and political leverage in the election process. It is important for the HBA and the housing industry to support qualified candidates for local office whose views and positions on legislation, closely match those of the housing industry.

**Excessive Government Regulations:** Hurt us all equally, tradesman, builders, and citizens alike. These regulations deter progress, economic growth, and the opportunity for Americans to purchase an "affordable home."

**State and Federal Law:** Prohibit the use of Association dues for the election of candidates to local and state office.

**A Strong PAC:** Can assist in maintaining a vital, booming housing industry, economy and promote a sense of identity and community in both our cities and suburbs.

**The HBA Serving Portage & Summit Counties BUILDERS-PAC:** Supports independent and bi-partisan candidates strictly on their qualifications and views on the issues. Support is not based on their political party affiliation.

**The HBA Committee:** Consists of HBA members and staff who determine which candidate receives support. The committee also encourages your support and attendance at BUILDERS-PAC events. **All HBA Members:**

Are encouraged to provide their input, support Political Action Committee fundraisers, and to contribute whatever they can afford. **2008 is an Election Year:** A change in leadership could indicate a change in policy.

**We need you and your support. When the HBA membership supports BUILDERS-PAC we can have increased influence on issues that are significant to your business. We are the voice for the housing industry and need to be heard!**

### Results in Portage County

- The HBA continues to be invited to participate in the creation and review of legislation that directly affect our industry. These include the Portage Soil & Water Conservation district with the creation of pre- and post-construction ordinance; Portage County Regional Planning Commission with the entire update of the subdivision regulations and recently defeating the proposed changes to the original tract; and meeting with the Portage County Building Department, City of Kent, and City of Ravenna.

### Results in Summit County

- The HBA spoke in opposition to excessive set backs and fought for reasonable variances to be included in the new Summit County Riparian Protection Ordinance. The HBA is currently commenting on the Summit County Subdivision Regulations. The HBA has reviewed and made comments on the newly proposed Summit County Site Erosion and Sediment Control Ordinance. The HBA continues to seek housing opportunities for our builder members to construct affordable homes in new markets.

**HBA Member Benefit:** *By developing relationships that bring together HBA members and local elected officials & staff to discuss issues in our industry that effect YOUR business and bottom line!*

*(These changes have saved all builders and associate members thousands of dollars due to less delays, more timely inspections, and sensible interpretations of the code.)*

### Achieved Model Residential Codes – A Historic First for Ohio!

- ◆ OHBA took the lead in achieving true model code relief for all housing construction in Ohio with the passage of H.B. 175, which became effective for the entire state on May 27, 2007. OHBA continues to monitor and fight for builders, developers, associate members, and landowners on the new Statewide Sewage Septic Rules.

**HBA Member Benefit:** *OHBA continues to be our only voice at the statehouse, to lobby for our builder, developer, and associate members! They continue to fight against unwanted fees and regulations.*

**We are the Industry's ONLY Voice - Speaking to Protect YOUR Livelihood!**

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## Building Codes Committee

**HBA have the New Residential Code of Ohio Code Books for sale**

The books will be available at a fee of \$85 per book, please contact Mike to place an order.

### New Energy Code Still Being Debated

The cost of implementing the 2006 IECC continues to be a problem that is on the horizon for builders. **OHBA is working with the Board of Building Standards to hopefully effectuate a delay in its implementation for another year.** Presently, the code cannot be implemented in a timely manner. Additionally, questions about costs of the new code remain unanswered. OHBA plans to testify at the next Board meeting and the next JCARR hearing if it is necessary.

### Home fire sprinkler systems are costlier than advocates claim,

According to a new study by NAHB Economics. [The study](#) finds that, while installing fire sprinklers may bring down homeowner insurance premiums, the difference is not enough to pay for the sprinklers themselves. Also, home builders surveyed for the study reported fire sprinkler installation costs are about twice as high as

the costs touted by manufacturers and installers of the products, which adds to the argument that mandated systems have a negative effect on housing affordability. According to NAHB economist Lanlan Xu, the issues regarding sprinkler installations would be somewhat simplified if it could be shown that monetary savings existed to offset, or almost offset, the added upfront costs of installing fire sprinklers because builders would then be able to install the systems in most new homes and market the sprinklers effectively to prospective buyers as an added safety feature. Instead, however, from the insurer's point of view, sprinklers can generate savings but also may generate additional costs if they discharge accidentally and cause unnecessary water damage. So, while most insurers do offer meaningful discounts for residential fire sprinkler systems, those discounts are not substantial enough in any state to offset the added upfront costs that buyers face. In fact, the study showed that "using the average insurance payment as a crude proxy for the basic premium, the most an average new home buyer in a particular state can expect to save on home owner insurance appears to be about \$95 per year." And since insurance companies usually have a cap of about 20% for discounts related to safety devices (for example, deadbolt locks, burglar alarms and smoke detectors), given the large number of such features in many homes, the actual impact on the insurance payment could be very small or zero. Read more about the study, [Fire Sprinklers and Home Owner Insurance](#).

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## Builders / Remodelors News

### Helping consumers see things in a new light,

NAHB has developed [five new eye-catching ads](#) that can be used by our members and HBAs in newsletters and on Web sites, placed with local media or printed as handouts. Each of the ads are designed to encourage consumers to buy a new home or to promote the general benefits of buying a new or existing home. They are immediately available on the NAHB [Web site](#) in PDF format.

### Builders Oppose Attempts to Prohibit Arbitration in Home Contracts

The [House Judiciary Committee's](#) Subcommittee on [Commercial and Administrative Law](#) held a hearing on Oct. 25 on H.R. 3010, the Arbitration Fairness Act of 2007. The legislation is opposed by NAHB because it would prohibit the use of binding arbitration agreements in residential contracts. In a letter sent to Subcommittee Chair Linda Sanchez (D-Calif.), NAHB said that the use of alternative dispute resolution, including binding arbitration in consumer contracts, "is often the most rapid, fair and cost-effective means to resolving disputes -- for both the builder and the buyer -- arising out of the construction and/or sale of the home. In contrast, litigation is an inefficient means to resolve construction defect disputes; it is expensive, time-consuming and unlikely to produce the desired result, which is having a problem repaired. Consequently, NAHB will strongly oppose H.R. 3010 and any other attempt to prohibit the use of pre-dispute arbitration in home construction defects."

### NAHB resources on immigration law

are right at your fingertips, thanks to a special section devoted to the topic on our Web site. With proposed [federal](#) immigration reform legislation failing to pass the Senate this summer, many [states](#) are taking the issue into their own hands and proposing — and in some cases, passing — their own immigration legislation. In order to help builders stay informed about the immigration issue and comply with current regulations, NAHB has compiled the following resources at [www.nahb.org/immigration](http://www.nahb.org/immigration):

Safe-harbor procedures for employers who receive no-match letters

An overview of the I-9 verification process

What to do during an ICE (U.S. Immigration & Customs Enforcement) audit

Sample subcontractor immigration language

Talking points for communication with members and key stakeholders

Statistics showing why legal immigrant workers are vital to the health of the U.S. economy

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## Land Use, Environmental, & Utility Policy Committee

### **Attend the Next Land Use, Environmental & Utility Policy Meeting on Friday, November 16**

It will be held on Friday, November 16 at 11:30 a.m. at the HBA Headquarters on 799 White Pond Dr., Akron. We will be discussing stormwater and wetland permitting. This meeting is open for **ALL** builder and associate members and *we will focus on local and state issues affecting your bottom line!* If you have any new land use, environmental, or utility policy issues, join us for an open discussion with other members and local regulatory officials. The fee is \$10 for lunch and you must make a reservation in order to receive lunch. Please call the HBA to make a reservation at 330-869-6800 or go online at [www.akronhba.com](http://www.akronhba.com). **MARK YOUR CALENDARS!**

### **OHBA Continues to Follows Electric Restructuring**

The electric restructuring hearings have dominated the legislative committee schedule. The committee has heard testimony from utilities, manufacturers, the Ohio Consumers Council and the PUCO. We are working to address the issue of line extension costs and it has been an issue for committee members as many of the members have asked questions regarding such costs. **OHBA is working to put the line extension costs back into the rate base so that the cost can be spread to all customers.** The Senate anticipates voting out the bill by the end of the month. At that point, the House will hear the bill over the next month. It appears the bill will be passed before the end of the year, which is a goal for Governor Strickland.

### **Sewage Treatment Advisory Committee Begins Meetings**

The sewage treatment advisory committee (SAC) that is designed to make recommendations to the legislature regarding sewage treatment rules has been formed and will begin to meet next week. Bill Martin from the HBA of Greater Cleveland will be representing OHBA's seat on the committee. The committee will be recommending changes to the rules that were repealed. This is a good chance to make a positive change in the rules. **Please contact OHBA with specific issues you encounter daily and specific changes you would like to see so that we can forward them on to Bill and the committee.**

### **NAHB is fighting a flawed proposal by Rep. John Dingell (D-Mich.)**

that would eliminate or curtail the mortgage interest deduction for a large swath of American homeowners. Under the proposal, taxpayers owning homes larger than 3,000 square feet would lose at least a portion of their mortgage interest deduction, while owners of residences larger than 4,200 square feet would lose all of their mortgage interest deduction. **Ostensibly intended to fight "sprawl" and encourage energy efficiency, the revenue raised from such deduction cutbacks would actually be used to expand the Earned Income Tax Credit.** NAHB projects that Dingell's plan would result in a massive tax increase of over \$13 billion per year for over 6 million families, representing a loss of more than 16% of the aggregate mortgage interest deduction value. Meanwhile, all homeowners would be faced with housing price declines — particularly the nearly 10 million households who own homes larger than 3,000 square feet. Moreover, the proposal is not an effective method of achieving the goal of energy conservation, since new homes are far more energy efficient than older homes and a tax-related mandate for home size will only slow the replacement of older, less energy-efficient housing stock. NAHB research indicates that the amount of energy consumption — specifically electricity consumption — is not directly related to home size; rather, it is more a function of consumer behavior such as appliance usage. Not to mention the fact that the proposal's link to "sprawl" is very odd, since Census data reveals that the average lot size of new homes fell by more than 10% from 1992 to 2006.

**NAHB is encouraging our members to contact Rep. Dingell with your concerns about his proposal — you can do so directly through [this link](#).**

### **Continuing our battle over the jurisdiction of upland ditches,**

NAHB filed an important legal brief on Sept. 28 with the U.S. District Court for the District of Columbia defending our "standing," or right to sue, the U.S. Army Corps of Engineers over its Section 404 Nationwide Permit 46. NWP 46, which was released by the Corps in March of this year, illegally expands the Corps' jurisdiction to reach upland ditches — features that are not "navigable waters" under the Clean Water Act. Upon release of this new NWP in March 2007, NAHB immediately filed suit on the matter. Rather than defend NWP 46 on the merits, however, the government then filed a motion to have our suit dismissed on grounds that we

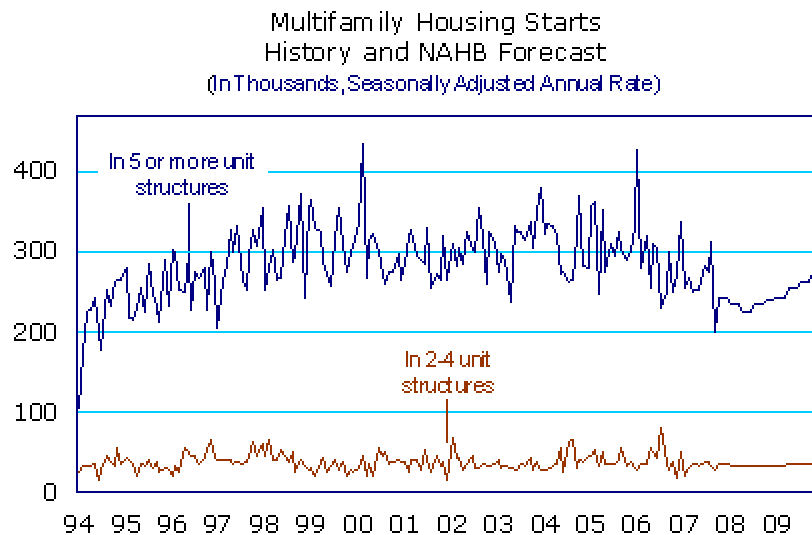
lack standing. Our newly submitted brief explains that NWP 46 has an immediate impact that causes injury to NAHB and its members, and that said injury might be redressed by the Court's review of the Corps's action.

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## Multifamily, Commercial & 50+ Council

### The Starts Elevator is Going Down...

In October, the starts rate for apartments in buildings with five or more units reversed the uptick it registered in September, dropping 36% to a (seasonally adjusted annual) rate of 201,000 housing units. This also is down 33% percent on a year-over-year basis. Although it's always advisable to keep volatility and subsequent revisions in mind when looking at data for a single month, the 201,000 is notable for being quite low by historical standards—the lowest, in fact, since July of 1994, when the multifamily industry was recovering from the bust period of the early 1990s.



Meanwhile, the rate at which new five-plus permits were issued (a series, which traditionally shows less volatility than starts and can be an indicator of future production) fell by 6% from the previous month and 15% year-over-year, to a seasonally adjusted 311,000. That's the lowest the permit-issuing rate has been since the beginning of 2003. NAHB's short-run forecast, which has been extended through 2009, calls for 258,000 five-plus starts in total for 2007, falling to 235,000 in 2008, then rebounding somewhat to 260,000 in 2009. Although the low point of a cycle is always hard to pinpoint, the forecast currently shows the five-plus starts rate bottoming out in the second quarter of next year, before beginning a period of gradual recovery.

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## Northeast Ohio Green Building Initiative

[www.neogbi.org](http://www.neogbi.org)

## Smart Growth Education Foundation

[www.neosmartgrowth.org](http://www.neosmartgrowth.org)

**HBA now has several copies of the  
NAHB Model Green Home Building  
Guidelines Available!**

Please contact Mike Menett at 330-869-  
6800 ext. 18 or [mikem@akronhba.com](mailto:mikem@akronhba.com)



### **HBA Announces New Partnership with the Northeast Ohio Green Building Initiative**

***Join us on Friday, November 2 at 1:00 p.m. at the HBA Homequarters  
Orientation for All Members interested in joining the Northeast Ohio GBI***

#### **NAHB Green Building Update:**

The first public comment period for our proposed residential green building standard has just closed as NAHB moves closer to creating a green certification protocol for single-family and multifamily homes, lot and site development and residential remodeling. A [draft version](#) of the proposed standard is currently posted on the NAHB Research Center's Web site in accordance with procedures established by the American National Standards Institute (ANSI). Based on the NAHB Model Green Home Building Guidelines, the new standard has been reshaped by committee members who have been working since last spring in task groups assigned to study specific components of the guidelines and make recommendations for change. For example, residential remodeling and multifamily construction issues, which were not previously addressed in the guidelines, will be part of the standard. The committee has also spent considerable time revamping the point system in the guidelines so that it assigns higher point values for practices that result in more significant "green" benefits. And, beyond the existing bronze, silver and gold certification levels, the draft proposes an emerald level for homes with significant green features. The draft also specifies more mandatory practices, such as Energy Star-rated windows. The consensus committee will next meet Oct. 29-31 to review all the comments that have been submitted and make decisions on whether to accept, reject or modify the recommendations. The NAHB Research Center can then take the next step to incorporate the proposed changes prior to a second 45-day public review period. NAHB is working with the International Code Council to develop the new standard, which, depending on how long it takes ANSI to review it, is now planned for release in March 2008.

#### **Mark Your Calendars: Smart Growth Education Awards of Excellence – Friday, April 4, 2008**

Please mark your calendars for the 5<sup>th</sup> Smart Growth Awards of Excellence being held on Friday, April 4, 2008 at Greystone Hall in Akron with Sustainability Program prior to the program and a tour of Akron smart growth housing following the program. We need all architects, engineering firms, builders, or developers to submit entries with Smart Growth principles, new awards this year will include Green Building, Sustainability Principles, and Commercial Buildings.

**Stay tuned for the Call for Entry being mailed out in early November! + Online at**

[www.neosmartgrowth.org](http://www.neosmartgrowth.org)

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## State Issues from OHBA and Ohio State House

Ohio Home Builder's Association <http://www.ohiohba.com>

### OHBA Fall Meeting

OHBA Fall Board of Trustees Meeting is set for November 13-15 at the Hilton Easton in Columbus. Hotel room cut-off date is October 23<sup>rd</sup>. **Contact the Hilton today to reserve your room at (800) 445-8667.** Request OHBA room block. Room rate is \$175 plus tax per night.

**Attend a special round table discussion meeting on "How to Deal with Troubling Times" on Wednesday, November 14<sup>th</sup> from 11:00 a.m. to 1:00 p.m.**

### Bills Introduced

**HB 340 -- INTERIOR DESIGNERS BOARD** (*Flowers, R -- Canal Winchester*) To create the State Board for Certified Interior Designers and to permit interior designers who meet certain requirements to be certified by that Board. The bill has been assigned to the House Commerce and Labor Committee.

### Bill Heard in Committee

**HB 257 -- HOME INSPECTOR CERTIFICATION** – (*Schneider, R – Madeira*)

This bill requires the certification of home inspectors and regulates the certification and performance of home inspectors. The bill has had sponsor testimony and was scheduled to have proponent testimony this week, but the committee hearing was cancelled due to the session schedule. The bill has been rescheduled for proponent testimony next week in the House Commerce and Labor Committee.

**SB 221 -- ELECTRIC RESTRUCTURING** (*Schuler, R – Sycamore Township*)

See story above.

**SB 225 – ARCHITECTS LAW** (*Schaffer, R – Lancaster*)

This bill makes changes to the Architects law. The bill had sponsor testimony this week in the Senate Insurance, Commerce & Labor committee.



## National Issues from NAHB and Capital Hill

National Association of Home Builders <http://www.nahb.org>

### 2008 International Builders' Show

February 13– 16, 2008 at the Orange County Convention Center – Orlando, FL

Registration and Housing for the 2008 International Builders' Show opened on **Wednesday, June 20!**

You don't want to miss this show!

<http://www.buildersshow.com/> **REMEMBER TO REGISTER!**

## **Mortgage Debt Forgiveness Bill Sails Through House**

NAHB-supported legislation to help ease the credit crunch situation was overwhelmingly approved by the House of Representatives on Oct. 4 in the form of a bill that eliminates taxes on forgiven mortgage debt when banks renegotiate the terms of a home loan. This change in tax law, which would cap untaxable forgiven debt at \$2 million and apply only to principal residences, will play a central role in helping American families avoid foreclosure and stay in their homes. The legislation, which passed, 386-27, is needed because existing rules under Sec. 108 of the Internal Revenue Code impel many struggling homeowners to seek foreclosure over restructuring their loan with lenders due to the fact that forgiven mortgage debt can be taxed as ordinary income. H.R. 3648, the Mortgage Forgiveness Debt Relief Act of 2007, would remove this tax burden on mortgage indebtedness, encourage market-based restructuring between lenders and homeowners, and discourage foreclosures. It's also in keeping with one of the key policy provisions approved at NAHB's Fall Board of Directors Meeting to address the mortgage credit crunch.

The same bill also includes an NAHB-supported provision that extends the deductibility of mortgage insurance, thereby making homeownership more affordable to thousands of additional families who would otherwise have to resort to more costly subprime or predatory alternatives. The current deduction, which is set to expire on Dec. 31, would be extended through 2014 under this legislation. To cover the estimated \$2 billion 10-year cost of the overall bill, it also includes a provision that would change the tax laws affecting second homes that are converted to primary residences. NAHB worked closely with members of the [House Ways and Means Committee](#) to minimize the negative impacts of this provision as much as possible – for example, we pushed for a "grandfather" clause that allows most existing second-home owners to live under the old rules. In the end, NAHB Senior Officers and members of our Taxation Subcommittee and Federal Government Affairs Committee analyzed the legislation in depth, concluding that it was structured in such a way that the huge benefit on debt forgiveness and the extension for the deductibility of mortgage insurance outweighed the tax changes for second homes.

## **New Program to Help Home Owners Avoid Foreclosure**

A new program called "HOPE NOW" announced this week by Treasury Secretary Henry Paulson and HUD Secretary Alphonso Jackson will help American families avoid foreclosure and stay in their homes. The initiative brings together foreclosure prevention counselors, mortgage servicers and other mortgage market participants in an alliance to help homeowners who are facing default. It will provide at-risk borrowers with information and resources that will allow them to keep their home by restructuring the terms of their mortgage or pursuing other options available to them. NAHB has strongly encouraged and supported recent efforts of the mortgage industry to provide foreclosure prevention counseling and assistance to borrowers who have encountered mortgage difficulties. A hotline established to assist borrowers facing foreclosure has been publicized through NAHB's web site and in communications to our state and local HBAs. NAHB will continue to publicize foreclosure prevention resources in communities throughout the country and work with HOPE NOW to help expand its outreach efforts.

## **Federal Judge Blocks No-Match Rule**

A federal judge on Oct. 10 issued a preliminary injunction blocking the Bush Administration from instituting a controversial immigration rule that could force employers to fire workers if their Social Security numbers don't match federal records. At issue is a final rule announced in August by the Department of Homeland Security regarding Social Security non-match letters. The rule advises employers on how they should respond if they receive a no-match letter ("Employment Correction Request") from the [Social Security Administration](#) (SSA) indicating that the combination of the employee's name and Social Security number does not match agency records. SSA had intended to mail out approximately 140,000 employer no-match letters in 2007 affecting more than 8 million workers. Many of these letters are the result of clerical and other errors, and involve the records of U.S. citizens and legal residents. The letters do not necessarily mean that the employee is an illegal alien. However, under the rule if the no-match situation is not resolved within 93 days, the employer must either fire the worker, or risk being charged with an illegal hiring violation if it is ultimately determined that the employee is in fact an illegal alien.

A coalition of civil rights, business and labor groups, and the [U.S Chamber of Commerce](#) sued to block the implementation of the rule because they said that SSA records were riddled with errors, and would ultimately result in the mass termination of legal workers. U.S. District Court Judge Charles Breyer of San Francisco said that the coalition had demonstrated a high probability that the Department of Homeland Security had failed to

follow proper administrative procedures in promulgating the rule, including a failure to assess the economic impact on small businesses required under the Regulatory Flexibility Act. Judge Breyer found that small businesses could expect to incur significant costs associated with complying with the rule, and, as asserted by the coalition, the “government’s proposal to disseminate no-match letters affecting more than eight million workers will, under the mandated time line, result in the termination of employment to lawfully employed workers.” Issuing the preliminary injunction would, according to Judge Breyer, cause far less harm to the federal government than would necessarily be caused to innocent employers and workers if the rule were permitted to go into effect. Under the terms of the preliminary injunction, the Department of Homeland Security is barred from implementing the no-match rule pending the court’s final decision on the rule’s legality, a process that could take many months.

## **Every item in this newsletter is further evidence why you should support YOUR PAC!**

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For more information on these items, please contact Mike Menett, Assistant Vice President, HBA. To *Subscribe* or *Unsubscribe* from the HBA Government Affairs Monthly E-Update

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