

Novogradac Journal of Tax Credits

News, Analysis and Commentary On Affordable Housing, Community Development and Renewable Energy Tax Credits

July 2010, Volume I, Issue VII

Published by Novogradac & Company LLP

WASHINGTON WIRE



Extenders, Other Tax Credit Legislation Progress Slowly

By Michael J. Novogradac, CPA

Upon reconvening from its Memorial Day state work period, the Senate began consideration of the House-passed extenders bill, H.R. 4213, the American Jobs and Closing Tax Loopholes Act of 2010. On June 8, Senate Majority Leader Harry Reid, D-Nev., and Finance Committee Chairman Max Baucus, D-Mont., introduced Senate Amendment 4301, a substitute for H.R. 4213.

The House-passed version of H.R. 4213 that was approved in May included:

- ♦ a one-year extension, through 2010, of the Treasury Department's Section 1602 grants for low-income housing projects in lieu of low-income housing tax credits (LIHTC exchange) program;
- ♦ a two-year extension, through 2012, of the placed-in-service date for properties financed with Gulf Opportunity (GO) Zone LIHTC;
- ♦ an extension for one year for properties located in disaster areas to use the 50 percent depreciation that is allowed for the first year that the property is placed in service;
- ♦ one-time capitalization funding of \$1 billion for the National Housing Trust Fund and \$65 million for project-based vouchers to states to support trust fund-financed properties;
- ♦ a one-year extension, through 2010, of the New Markets Tax Credit (NMTC) program;
- ♦ a provision to allow the NMTC to be used to offset the alternative minimum tax (AMT) with respect to qualified investments made between March 15, 2010 and January 1, 2012;
- ♦ a two-year extension of the Build America Bonds (BABs)

program;

- ♦ a one-year extension of tax-exempt housing bond disaster relief; and
- ♦ an exemption from the private activity bond volume cap for bonds financing water and sewage facilities.



The June 8 Senate substitute amendment did not modify any of these provisions but it did modify the carried interest tax provision in the House-passed bill.

Debate on the bill lasted several days, during which time other senators offered a number of amendments to the Reid/Baucus substitute amendment. On June 16, the Senate defeated a procedural motion to advance Senate Amendment 4301. Following that defeat, Sen. Baucus introduced Senate Amendment 4369, a new substitute amendment with additional changes intended to narrow it further to win enough support to pass the bill. Fortunately, the LIHTC exchange program extension and other provisions listed previously were retained in the second Amendment 4369.

In addition, thanks to the efforts of Sens. Evan Bayh, D-Ind., Richard Shelby, R-Ala., Blanche Lincoln, D-Ark., David Vitter, R-La., and Mary Landrieu, D-La., the second amendment included a provision to expand the LIHTC exchange program to make GO Zone and Disaster Area tax credits eligible.

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Also on June 16, Sen. Maria Cantwell, D-Wash., proposed an amendment to the pending tax extenders bill that would extend the Section 1603 renewable energy tax credit cash grant program through the end of 2012. Supporters of the extension estimate it would create at least 65,000 jobs in the solar energy sector alone. The amendment also would make not-for-profit power producers eligible for the Section 1603 program. The amendment was co-sponsored by Sens. George LeMieux, R-Fla., Dianne Feinstein, D-Calif., Debbie Stabenow, D-Mich., Jeff Merkley, D-Ore., and Ben Nelson, D-Neb. At the time of this writing, the Cantwell amendment to extend the Section 1603 program was not included in the larger extenders bill.

As we went to print, Senate leadership was working to secure the 60 votes needed to advance the legislation. Progress was slowed largely because of cost concerns and because of objections to the provisions on carried interest that proved controversial among some Democratic senators. However at the time of this writing it was widely expected that H.R. 4213 would be amended and passed in the Senate, and then approved by the House for final passage.

Life After Extenders for LIHTC Consensus Proposals

As the Journal of Tax Credits went to press, Congressional leadership was still planning to consider small business jobs legislation and the A.C.T.I.O.N. campaign believes this package could be another potential vehicle for its proposals. House Ways & Means Chairman Sander Levin, D-Mich., introduced a new small business jobs tax bill — H.R. 5486 — on June 9. Levin's bill contains proposals from the first small business jobs bill, H.R. 4849, that were not moved to the extenders bill, with the exception of the 4 percent rebate provision. The House passed H.R. 5486 on June 15 by a vote of 274 to 170.

The A.C.T.I.O.N. campaign reported last month that LIHTC supporters had delivered draft legislation to Sen. Jeff Bingaman, D-N.M., that would modify the five-year general business tax credit carryback provision in the draft bill to match the approach taken in Part A of the LIHTC consensus group's investor carryback proposal. As I write this, reports indicate that the Senate Finance Committee is still considering including the carryback proposal in its version of the small business jobs bill. Despite concerns about the deficit, and a lack of non-controversial off-setting pay-fors, as well as the busy legislative calendar, the campaign urged continued advocacy efforts from the tax credit community.

Financial Regulatory Reform

Adding to the crowding on the legislative calendar, efforts to pass financial regulatory reform continued to progress. The Senate passed its version of financial reform legislation on May 20. The measure was then moved into conference committee to be recon-

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ISSN 2152-646X

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ciled with the House financial reform bill that was passed on December 11.

On June 9, House Speaker Nancy Pelosi, D-Calif., appointed several Democratic House members to the conference committee on the financial reform bill, H.R. 4173. House Financial Services Committee Chairman Barney Frank, D-Mass., will serve as the chair of the conference committee. Also on June 9, House Republican Leader John Boehner, R-Ohio, appointed the Republican members to the conference committee. The National Council of State Housing Agencies (NCSHA) has noted the complete list of conferees on its blog. The conference committee began meeting on June 10 and was slated to complete action on its report by June 24. At the time of this writing the House and Senate planned to pass the final bill before the July 4 recess.

NCSHA and a number of other industry associations have been actively working on legislative financial reform issues of significance to state housing finance agencies (HFAs), including risk retention provisions. NCSHA believes that some of the provisions might make it more difficult for HFAs to issue tax-exempt housing bonds. There was also concern about provisions that could limit the ability of HFAs to use swaps and other derivative financial products.

In addition, some fears had been raised about a provision referred to as the Volker Rule. The provision was introduced to the Senate bill by Sens. Levin and Jeff Merkley, D-Ore. The Volker Rule is designed to limit equity investments by financial institutions.

There was some apprehension that the rule could limit the ability of financial institutions to make equity investments in tax credit transactions, such as low-income housing tax credit, new markets tax credit, historic tax credit, or renewable energy tax credit transactions.

However, the exception that limits equity investments doesn't apply to certain types of public welfare investments by financial institutions. As such, there is a general belief that low-income housing tax credit investments will not be affected negatively by the Volker Rule. Professionals who work with other tax credits are examining the rule closely to determine if there will be any impact on similar transactions.

Other Items on the Agenda

Congress has a number of other issues on its already packed docket, including energy legislation and appropriations. Majority Leader Harry Reid alerted Senate committee chairmen in early June that he plans to move comprehensive energy legislation this month. Sen. Reid asked the chairmen to recommend legislation to deal with the Gulf oil spill before July 4 so that leaders could include

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those ideas in the comprehensive energy package.

In addition, the annual appropriations process looms in the background. At the time of this writing none of the 12 appropriations measures that Congress would usually consider and pass had been introduced. In light of the short time remaining in the current legislative session and the number of issues lawmakers hope to address, it is possible — if not likely — that federal appropriations will be handled by passing a series of continuing resolutions. In that case relatively few changes would be made from the previous year's budget, although there is room

for increases or decreases in funding amounts for the various federal agencies and their respective programs.

Stay Tuned

The legislative landscape continues to shift almost daily, so the tax credit community must pay close attention to the goings-on in Congress. It may be vital to identify and seize opportunities—fleeting as they may be—to advance the various proposals under consideration to improve and protect tax credits for affordable housing, community development and renewable energy. ❖

This article first appeared in the July 2010 issue of the Novogradac Journal of Tax Credits.

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