

Novogradac Report on Tax Credits
Transcript: January 26, 2010

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(Intro music)

Hello! It's Tax Credit Tuesday and I'm Michael Novogradac.

Today is Tuesday, January 26th, 2010. I am in Southern California today attending and speaking at the Affordable Housing Tax Credit Coalition's annual meeting. Tomorrow I head to San Diego for Novogradac's new markets tax credit conference. We have a basics day tomorrow, Wednesday, followed by the full conference on Thursday and Friday. As a testament to the vibrancy of the NMTC community, we have over 320 registered attendees.

This week's I will discuss the climate in Congress as it resumes its legislative session. There are several proposals in play that could have significant implications for tax credit community, including the proposed codification of the economic substance doctrine and a new jobs bill.

Then I will review the bank fee proposed on January 14th by the Obama Administration. We learned last week that that Ways and Means Committee Chair Charlie Rangel and Financial Services Committee Chair Barney Frank will draft the Obama bank legislation.

I will also discuss the Capital Magnet Fund, which is a program that was created by the Housing and Economic Recovery Act, or HERA. This promising new program will provide grants to finance affordable housing and related community development projects.

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And finally I will share highlights from the latest low-income housing tax credit utilization figures compiled by the National Council of State Housing Agencies.

Now, let's get started with a look at what is going on in Washington, D.C. since the House and Senate have returned for the second session of the 111th Congress.

The House officially reconvened on Tuesday, January 12th and the Senate reconvened on Tuesday, January 19th.

Perhaps one of the biggest developments since Congress recessed late last year is the result of the special election in Massachusetts. There has been considerable speculation about what effect Republican Senator-elect Scott Brown will have on the future of health-care reform and other issues. With his election, Democrats will no longer control the 60 votes in the Senate needed to overcome filibusters.

Prior to the winter recess, the House passed legislation on health care, financial regulatory reform and a jobs bill that included funding for the National Housing Trust Fund.

The House's legislative priorities for the second session are likely to include health-care reform, the annual appropriations bills, and conference reports on the legislation now pending in the Senate, such as financial services reform.

In the Senate, legislative priorities may include passage of tax extender legislation, financial regulatory reform, and reform of

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government-sponsored enterprises Fannie Mae and Freddie Mac, among other issues.

One thing is certain, however, and that is that jobs will continue to be a central issue in Congress.

A poll released last week by the National Journal found that 83 percent of Democratic and 65 percent of Republican insiders say job creation legislation is a must in order to help Democrats' political prospects.

The National Trust for Historic Preservation reported last week that the Senate is expected to take up its version of a jobs stimulus bill sometime in the weeks leading up to the Presidents Day district work period. The Trust indicated that the package could possibly include a major funding initiative for school rehabilitation and renovation, as well as a jobs training program for national historic rehabilitations.

In addition, the National Trust says it is still hopeful to include a preservation jobs bill provision in the Senate bill that outlines a green jobs training program. The provision is modeled after a program in Michigan that would set aside 10 percent of the available funding for state job programs aimed at training workers for energy efficiency retrofits in historic homes and older dwellings eligible for listing on the National Register of Historic Places.

In addition to a jobs package, several legislative proposals that are under consideration could affect the tax credit

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community, including the codification of the economic substance doctrine.

As most listeners know one of the health-care plans being considered in Congress includes a provision to offset some of the cost of the bill by codifying the economic substance doctrine. This provision would amend the Internal Revenue Code to statutorily define when the doctrine would apply. Opponents of the proposal believe that these issues should be decided on a case-by-case basis by federal courts, as is done now.

The economic substance doctrine provision could be problematic for the tax credit community because there are concerns that it could have an inadvertent negative impact on tax credit transactions. And as I have mentioned in previous podcasts, lawmakers have indicated in previous years that tax credits should not be jeopardized by the economic substance doctrine.

On January 15th, the New Markets Tax Credit Coalition sent a letter to Treasury Acting Assistant Secretary for Tax Policy Michael Mundaca voicing its concern about codification of the economic substance doctrine and its impact on the new markets tax credit.

The Coalition reports that it has been assured by some congressional staff members that the codification of the economic substance doctrine is not - that's right not - intended to, and therefore would not, have any adverse impact on NMTC transactions. However, members of the NMTC Coalition and other groups, including the Affordable Housing Tax Credit Coalition, remain

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concerned that unless the legislation codifying economic substance includes language stating that tax credit investments authorized by the Internal Revenue Code are not subject to the economic substance test, the potential for adverse impact still exists. At a minimum, concerned organizations believe clarifying language should be included in committee reports explaining that any economic substance statutory language approved by Congress is not intended to adversely affect government authorized tax credits. As such, the Coalition's letter asks the Treasury Department to support its efforts by insisting that specific language be included. .

A copy of the letter is available online at www.newmarketscredits.com and at www.novoco.com slash hot topics.

In recent meetings with tax legislative staff, it appears that the concerns are being heard and legislative staff may be open to including clarification in committee reports, clarification that the economic substance doctrine is not intended to affect government authorized tax credits, including the new markets tax credit, the low-income housing tax credit, the historic tax credit and renewable energy tax credits.

Another issue that may be considered in Congress in the coming session is the fee that the Obama Administration has proposed be imposed on the nation's large financial institutions.

On January 14th, President Barack Obama joined his economic team to propose a Financial Crisis Responsibility Fee. This fee be

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imposed on the debt of the largest financial firms. The administration says the proceeds will go to repay taxpayers for the assistance that has been provided to Wall Street by the TARP program.

Under the proposal the fee would be in place at least 10 years. The Obama Administration says the cost will not be borne by community banks or small firms; only the largest firms with more than \$50 billion in assets will be affected. The administration's estimates indicate that 60 percent of the revenue raised by the fee will come from the 10 largest financial firms.

The fee the President is proposing would go into effect on June 30th and the administration estimates the fee would raise as much as \$117 billion to repay the projected cost of TARP. At the end of five years the Treasury Department would be asked to report on the effectiveness of the fee as well as its progress in repaying the projected TARP losses.

The fee would be levied on the debts of financial firms with more than \$50 billion in consolidated assets. The administration says this would provide a deterrent against excessive leverage for the largest financial firms.

The bill will be drafted by Ways and Means Committee Chair Charlie Rangel with assistance from Financial Services Committee Chair Barney Frank.

Senator Chuck Grassley, ranking member of the Committee on Finance, released a memo on January 15th asking the non-partisan

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Congressional Budget Office and the Joint Committee on Taxation for an analysis of President Obama's proposed responsibility fee.

Senator Grassley wrote in his request letter, and I quote: "I agree with the goals the President articulated. We in Congress have a responsibility to ensure the legislative product carries out the goals the President set. Before Congress is asked to vote on legislation imposing such a fee, it will be important to understand the potential impact on consumers, the criteria for applying the fee to some entities and not others, and the implications for the security and stability of these institutions." close quote

The White House says that more complete details of the proposed Financial Crisis Responsibility Fee will be released in conjunction with the President's budget, which is expected around February 1st. I will update you in future podcasts as more information becomes available.

In the meantime, a White House fact sheet about the bank fee can be found online at www.novoco.com. Simply click on Hot Topics and then choose the link called Financial Crisis Responsibility Fee.

Next, let's switch gears and review a new program that can be used to finance affordable housing and related community development projects in 2010.

Despite its massive size and scope, many provisions of the Housing and Economic Recovery Act of 2008, yes 2008, or HERA were lost in the shuffle as lawmakers and tax credit professionals struggled to adapt to the rapidly changing business environment.

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For example, HERA established the Capital Magnet Fund, a promising new housing and development program. The Capital Magnet Fund received direct funding of \$80 million under the president's 2010 budget. Eligible grantees include community development financial institutions, or CDFIs, and not-for-profit organizations that have development or management of affordable housing as one of their principal purposes.

The fund will be administered by the Community Development Financial Institutions Fund, or CDFI Fund. Grant dollars awarded through the fund will be used to attract private capital for and increase investment in the development, preservation, rehabilitation, or purchase of affordable housing primarily for extremely low-, very low-, and low-income families, as well as for related economic development activities or community service facilities. These facilities include day-care centers, workforce development and health-care clinics.

Under the new program, grantees will be allowed to use grant monies to establish loan loss reserves, to capitalize a revolving loan fund, an affordable housing fund, or a fund to support economic development activities or community service facilities, and to provide risk-sharing loans.

In March 2009, the CDFI Fund published a request for public comment inviting input about how it should design, implement and administer the fund. The following July the CDFI Fund 37 comment letters in response to its request for public comment.

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Nixon Peabody reported last week that officials from the CDFI Fund estimate that an interim rule could be released as early as late February 2010 and a final application would be published shortly thereafter.

We will continue to track the progress of this new program and provide updates in future podcasts, as well as in the Novogradac Journal of Tax Credits.

Our final topic for today is a quick look at the latest tax credit utilization data released by the National Council of State Housing Agencies.

Earlier this month, NCSHA released its annual compilation of housing tax credit utilization figures for 2008. NCSHA reports that in 2008, the total amount of per capita credits use by state housing agencies was more than \$680 million. After factoring in the amount of GO Zone and disaster tax credits, as well as returned, carryover and national pool tax credits, NCSHA says the total amount of credits used in 2008 was more than \$1 billion.

According to NCSHA's estimates, a total of 91,911 low-income apartments were financed with low-income housing tax credits in 2008. This amount represents a significant increase over 2007 and 2006. In 2007, only 74,663 low-income apartment units were financed with LIHTCs — in 2006 that figure was 70,030.

It will be particularly interesting to see the utilization figures for 2009. The 2009 figures won't be available for another several months but as soon as they are released Novogradac will post them online at

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www.taxcredithousing.com along with NCSHA's other tax credit utilization charts from 1987 through 2008.

While we're on the topic of the low-income housing tax credit, it's time for this week's Project Profile segment.

Morgan Stanley announced on January 19th that it had committed \$110 million to promote community development by financing construction of affordable rental housing.

In partnership with National Equity Fund—a national not-for-profit and a leading LIHTC syndicator— Morgan Stanley is capitalizing a \$50 million LIHTC investment fund and providing \$60 million to finance several hundred million dollars of additional NEF housing fund investments. Morgan Stanley's \$110 million commitment is expected to help finance 3,300 homes for low-income families, seniors and special needs residents and help create 6,500 jobs in communities hardest hit by the economic downturn.

In a statement released last week, Joseph Hagan, NEF President and CEO said Morgan Stanley's commitment is absolutely critical in this financial environment. He said quote: "Communities that literally have been starved for LIHTC equity over the last year and seen no new affordable housing activity will be able to move some of their projects forward. That's huge," close quote.

The Morgan Stanley investment also effectively leverages federal affordable housing stimulus dollars under the Tax Credit

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Assistance Program or TCAP and the Section 1602 LIHTC exchange program.

Before we wrap up, I'd like to remind listeners that the window to provide comments about the National Housing Trust Fund will close next week.

The affordable Housing Trust Fund was established last year by HERA. The fund will be administered by the U.S. Department of Housing and Urban Development or HUD. The purpose of the fund is to provide grants to states to increase and preserve the supply of rental housing for extremely low- and very low-income families, including homeless families, and to increase homeownership for extremely low- and very low-income families.

HERA charged HUD with establishing a regulation as to how to distribute the funds among the states. The statute specifically says that only certain factors are to be part of the formula developed by HUD, and assigns priority to certain factors. On December 4th, HUD proposed a formula and invited public comments. Comments will be accepted through February 2nd.

We encourage our listeners to provide comments to HUD and we'll continue to advise our listeners as to the status of the National Housing Trust Fund and most significantly funding for the fund.

More information about the fund, including a link to the comment invitation can be found online at www.hudresourcecenter.com. That's www dot hudresourcecenter all one word dot com.

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In addition, I will discuss the fund and its chances of being funded in my Washington Wire column in the February issue of the Novogradac Journal of Tax Credits. If you haven't had a chance to check out this new monthly trade journal, I encourage you to send an email to products at novoco.com and request a free sample copy.

One last item for this week is a review of the Tax Credit Calendar.

As we come to the end of January, several state housing agencies are gearing up for the year ahead. The following are examples of a few upcoming meetings and we encourage our listeners to participate in these meetings and make their voices heard as to how state tax credits and credit exchange and other monies should be used.

The Nebraska Investment Finance Authority will hold its 8th Annual Housing Innovation Marketplace this week on January 26th and 27th at the Omaha Regency Marriott. Additional details are available online at www.nifa.org, www.nifa.org.

In California, affordable housing developers and interested parties are invited to attend a Low-Income Housing Tax Credit application workshop that will be presented by the California Tax Credit Allocation Committee, or TCAC. TCAC will be providing half-day application training workshops next month in Sacramento, Los Angeles, San Diego and Oakland. The deadline to register for these workshops is February 5th. TCAC will provide workshop participants with instructions for submitting competitive and eligible applications.

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Sessions will be limited to 75 attendees and there is a \$95 per person charge.

The Georgia Department of Community Affairs will host 2010's QAP Workshop on Thursday, February 18th. The workshop will provide an overview of the requirements and criteria for applicants that intend to submit applications for federal and state low-income housing tax credits. All registration with payments must be received no later than January 31st. For questions on registration you can call (404) 982-3483.

Well, that brings me to the end of this week's report.

Tomorrow night, Wednesday, is the President's state of the union address to the nation, and news outlets are already reporting that he will be proposing a freeze on non-security discretionary spending. Please join me again next week when I will review the impact such a freeze may have national community development, housing and energy policy.

Join me again next week also because I will review the results of an annual review of low-income housing tax credit qualified allocation plans' green building criteria.

I will also discuss the findings of two recent reports that analyzed the effectiveness of using state tax credits to spur economic development.

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This is Michael Novogradac and I'll be back next Tuesday.
Thanks for listening.

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