

## **Novogradac Report on Tax Credits** **Summary: June 1, 2010**

Michael J. Novogradac, CPA, updates listeners on the tax extenders bill, reviews the Federal Housing Finance Agency's report on Fannie Mae, Freddie Mac and the Federal Home Loan Banks, shares highlights from the Government Accountability Office's report on the Recovery Act, discusses the IRS Audit Guide for the New Markets Tax Credit program, talks about historic preservation in Pennsylvania, and closes with a look at the Tax Credit Calendar.

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### **EXTENDERS UPDATE**

#### **Introduction:**

- On Friday, May 28<sup>th</sup>, the House of Representatives passed H.R. 4213, the American Jobs and Closing Tax Loopholes Act.
- After the House passed the bill, both the House and Senate recessed for the Memorial Day district work period.
- Congress reconvenes on June 7, at which time the Senate is expected to take up H.R. 4213 and likely adopt amendments.

#### **Provisions:**

- The legislation would extend for one year the Section 1602 low-income housing tax credit (LIHTC) cash grant exchange program and extend for one year the New Markets Tax Credit (NMTC) program.
- In addition, the bill would allow the NMTC to be used to offset the alternative minimum tax or AMT with respect to qualified investments made between March 15, 2010 and January 1, 2012.
- The bill would also provide \$1 billion in funding for the National Housing Trust Fund (NHTF), which was created by the Housing and Economic Recovery Act of 2008, or HERA, but has not yet been funded. An additional \$65 million is provided for project based vouchers.
- The bill would extend by two years the placed-in-service date for Gulf Opportunity (GO) Zone LIHTCs.
- For properties located in disaster areas, the bill extends for one year the 50 percent depreciation that is allowed for the first year that the property is placed in service.
- Also in the GO Zone the bill extends through 2010 of the increased rehabilitation credit for qualified expenditures in the Gulf Opportunity Zone.

#### **Not in the Bill:**

- The House-passed extenders bill does not contain the proposal to expand the program to include 4 percent tax credits.
- The 4 percent proposal is also not included in the draft Senate small business jobs bill, but supporters of the proposal suggest that if the Senate considers the bill, Senator Cantwell could offer an amendment to add it to the Senate package.

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- Alternatively, since the House already passed a version of this proposal in the House small business jobs bill as H.R. 4849, a modified version of the proposal could be added in the conference between the Senate and the House, if the bill gets to that stage.
- The ACTION campaign reports that Senate Finance Committee members have responded favorably to Senator Bingaman's efforts to modify the general business tax credit carryback provision in the draft bill to match the approach taken in the LIHTC consensus group's carryback proposal.

#### **Conclusion:**

- The National Council of State Housing Agencies reports that the Senate will consider the bill next week on June 7th.
- Follow me on Twitter to follow the progress of this bill as it happens.

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### **FHFA REPORT TO CONGRESS ON FANNIE MAE, FREDDIE MAC AND THE FEDERAL HOME LOAN BANKS**

#### **Introduction**

- On May 25<sup>th</sup>, the Federal Housing Finance Agency, or FHFA, released its second Report to Congress, detailing the findings of the agency's 2009 annual examinations of Fannie Mae, Freddie Mac, the 12 Federal Home Loan Banks and the Office of Finance.
- The report provides details on the Home Affordable Modification Program, or HAMP, and the Home Affordable Refinance Program, or HARP; compensation of FHLBank directors; and housing mission and goals information for all 14 government-sponsored enterprises.
- FHFA reports that throughout 2009, each company remained active in supporting the secondary mortgage market and, together, the enterprises' mortgage purchase and guarantee activity in 2009 represented more than 76 percent of total single-family originations.

#### **The report concludes:**

- Fannie Mae and Freddie Mac both remained critical supervisory concerns in 2009. The Enterprises continued to play a key role in providing liquidity and stability to the mortgage market and carrying out foreclosure prevention efforts in 2009.
- The 2009 financial condition and performance of half of the 12 FHLBanks are less than adequate due in part to investments in private-label mortgage-backed securities; the Seattle FHLBank was deemed "undercapitalized."

#### **Related news:**

- Congressman Paul E. Kanjorski, the Chairman of the House Financial Services Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises, announced last week that he will convene a series of hearings on the future of the housing finance system.
- The first hearing was held on Wednesday, May 26<sup>th</sup>. It focused on the work of the FHFA and the condition of Fannie Mae, Freddie Mac, and the Federal Home Loan Banks.
- Future hearings are expected to explore important issues like the role and regulation of mortgage insurance, the housing finance systems of other countries, and the structure and function of guarantee fees.

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### **Conclusion**

- A copy of the FHFA report can be found online at [www.taxcredithousing.com](http://www.taxcredithousing.com) by clicking on Hot Topics in the News Menu and then choosing the link called GSE Conservatorship.
- A related discussion about the future of housing finance is featured in the May issue of the Novogradac Journal of Tax Credits in the monthly feature, The Buzz, written by Buzz Roberts of LISC.

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### **GAO REPORT ON RECOVERY ACT**

#### **Introduction**

- On May 26th, the Government Accountability Office, or GAO, published a report about states' and localities' uses of Recovery Act funds.
- The GAO reports that as of May 7th, 2010 approximately \$114.8 billion, or 41 percent of the approximately \$282 billion of total Recovery Act funds for programs administered by states and localities, had been paid out by the federal government.
- Among a number of other Recovery Act provisions, the GAO report discusses the Public Housing Capital Fund, the Tax Credit Assistance Program or TCAP, and the Section 1602 low-income housing tax credit cash grant program

#### **Highlights:**

- The GAO reports that housing agencies met the March 17th, 2010, deadline to obligate, reject, or return a portion of the \$3 billion in formula grants under the Public Housing Capital Fund. As of May 1st, 2010, GAO says that agencies had drawn down about \$1 billion of these funds for projects such as replacing roofs or windows. HUD is reviewing obligations made just before the deadline to determine if any should be recaptured. HUD plans to redistribute any recaptured or returned funds this summer.
- Also, as of April 30th, 2010, HUD had obligated \$2.25 billion for TCAP and Treasury had obligated \$5.45 billion for the Section 1602 program to develop or rehabilitate affordable multifamily housing.
- Additionally, GAO reports that state housing finance agencies, or HFAs, reported concerns about their responsibility to recapture program funds from noncompliant projects and restrictions on using interest-bearing repayable loans. In its report GAO recommends that Treasury define the actions HFAs must take to recapture funds and that Congress consider directing Treasury to permit HFAs to disburse funds as interest-bearing repayable loans. According to the GAO report, the Treasury Department agrees with this suggestion.

#### **Conclusion:**

- A copy of the report can be found online at [www.taxcredithousing.com](http://www.taxcredithousing.com).

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### **IRS AUDIT GUIDE FOR THE NEW MARKETS TAX CREDIT**

#### **Introduction:**

- On May 26<sup>th</sup>, the Internal Revenue Service or IRS published its audit guide for the New Markets Tax Credit (NMTC) program.
- A copy of the audit guide can be found online at [www.newmarketscredits.com](http://www.newmarketscredits.com).
- The guide is used to provide guidance to IRS revenue agents on how to conduct examinations and audits of federal tax returns involving new markets tax credits.

#### **About the Guide:**

- The guide's six chapters cover:
  1. an overview of the NMTC program;
  2. techniques for auditing a community development entity (CDE);
  3. techniques for auditing investors;
  4. issues related to not-for-profit entities;
  5. the disclosure of tax information; and
  6. how the report is to be written by the IRS agent.

#### **Working Group Comments:**

- The Novogradac NMTC Working Group submitted comments last year on a draft of the audit guide.
- Additional comments may be submitted on the Audit Guide; if you have comments you'd like to suggest, please send an email to [CPAs@novoco.com](mailto:CPAs@novoco.com) or [brad.elphick@novoco.com](mailto:brad.elphick@novoco.com).
- The contents of the newly published guide will be discussed at the NMTC Working Group's next meeting, which will be held in conjunction with Novogradac & Company's 9th Annual New Markets Tax Credit Spring Conference on June 10<sup>th</sup> and 11th in Washington, D.C. Please call our Events line at 415-356-7970.

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### **HISTORIC PRESERVATION INVESTMENT IN PENNSYLVANIA**

#### **Introduction:**

- A group called Pennsylvania Works!, along with Preservation Pennsylvania, State Senator David Argall and State Representative Robert Freeman released two studies last week on the impact of historic preservation investments on the economy and jobs creation.

#### **Study Findings:**

- The studies showed that private and public investments in historic preservation in the state's two largest cities totaled almost \$1.2 billion over five years.
- In the past five years, 2004 to 2009, historic preservation projects throughout the region have had a significant impact on the southwestern Pennsylvania economy as demonstrated by the following results:
  - \$475 million overall investment,
  - \$65.6 million annual tax benefit generated, which is made up of:
    - \$3.8 million in annual wage tax revenue,
    - \$61.7 million from annual property taxes,
  - 1,204 housing units,
  - 5,242,289 square feet of renovated space, and
  - 1,370 construction jobs were created along with an estimated 3,042 permanent employment positions.
- During the same period - from 2004 to 2009 - the five counties of southeastern Pennsylvania saw 132 federal historic preservation investment tax credit projects, totaling \$712 million in total investments, of which \$646 million was tax credit eligible. These investments resulted in 1,558 new housing units, including 352 new affordable units.
- Supporters of a proposed state historic tax credit say that if real estate developers interested in restoring older buildings were given the opportunity to combine the federal tax credit with the proposed state tax credit, the number of jobs created and the economic benefit to individual communities would grow considerably.

#### **Proposed Tax Credit:**

- A proposed Historic Preservation Tax Incentive Act has been stalled in the Pennsylvania Senate for more a year.
- H.B. 42, passed by the House in March 2009, provides grants of up to \$15,000 for exterior rehabilitation of historic residences, state tax credits of up to \$500,000 for rehabilitation of historic commercial properties.

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- Priority would be given to properties located in Main Street, Elm Street, Enterprise Zones and Historic Districts.

**Conclusion**

- Copies of the reports and a copy of H.B. 42 can be found online at [www.historictaxcredits.com](http://www.historictaxcredits.com).

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**TAX CREDIT CALENDAR**

**June 2** - NMTC Applications Due for 2010 Round

**June 2** - Affordable Housing Tax Credit Coalition Presents Annual Charles L. Edson Tax Credit Excellence Awards

**June 9** - Internal Revenue Service's Advisory Committee on Tax Exempt and Government Entities Public Meeting.

**June 9** - Housing Advisory Group (HAG) Annual Congressional Forum

**June 9** - Novogradac & Company Pre-Conference Workshops for NMTC

**June 10-11** - Novogradac & Company LLP New Markets Tax Credit Spring Conference

**ALSO** - 2010 Rent and Income Limit Webinar Recording Available

**June 17 - 18** - Nevada Council for Affordable and Rural Housing (CARH)

**June 22-25** - National Council of State Housing Agencies (NCSHA) 2010 Housing Credit Conference & Marketplace

**June 22-25** - Affordable Housing Investors Council (AHIC) Summer Meeting