

## **Novogradac Report on Tax Credits** **Summary: June 8, 2010**

Michael J. Novogradac, CPA, updates listeners on the status of tax extenders legislation, reviews Congress's calendar, discusses a possible energy amendment to the extenders bill, shares an update from the Treasury Department on Build America Bonds, examines HUD's 2007 Worst Case Housing Needs report and describes financial services legislation and its status in the House and Senate. He also mentions how the low-income housing tax credit played a role in the Senate race in Iowa, discusses state tax credit developments in Massachusetts and Oklahoma, and concludes with a look at the Tax Credit Calendar.

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### **CONGRESSIONAL CALENDAR OVERVIEW, EXTENDERS UPDATE**

#### **Introduction**

- Congress reconvened yesterday, June 7<sup>th</sup>, after its Memorial Day recess/district work period.

#### **Schedule for Remainder of Session:**

- July 5–9 Independence Day District Work Period
- August 9–September 10 Summer District Work Period
- House Target for Adjournment: October 8

#### **Tax Extenders**

- Debate in the Senate could begin on H.R. 4213, the House-passed tax extender bill, as early as today, July 8<sup>th</sup>.
- Unemployment and COBRA provisions could be carved out and passed separately, and consideration of extenders could be delayed.
- One of the obstacles to quick passage in the Senate is objection to the cost of the bill and a number of the revenue offsets used to pay for the tax extenders such as the taxation of carried interest.
- The Senate bill will be subject to amendment, but amendments are unlikely to including expanding the exchange program, an investor carry-back provision, or incentives for individual investors.
- In all likelihood the bill will not pass without revision so the measure may need to go back to the House again for final passage. The current goal is for Congress to pass the bill before the July 4th recess.

#### **Issues Likely to Be Addressed After Extenders**

- A completing consideration of the extenders bill, a small business jobs bill may still be considered in the Senate, either in the Finance Committee or directly on the floor.
  - The ACTION campaign reports that low-income housing tax credit supporters have delivered draft legislation to Senator Bingaman that would modify the 5-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
  - The group has not yet had any confirmation that Senate Finance Committee Chairman Baucus has accepted this modified carryback.

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- Also, on the tax front:
  - Extending the Bush tax cuts for all but the high net-income taxpayers
  - Extending the expired estate tax
- Also on the docket, Majority Leader Harry Reid alerted Senate committee chairmen last week that he plans to move comprehensive energy legislation in July. Reid asked the chairmen to recommend legislation to deal with the Gulf oil spill before July 4 so that leaders can include those ideas in the comprehensive energy package.
- Another high profile issue is financial reform, which I will address in more detail in a moment.
- In addition, the annual appropriations process is also still looming. At the time of this recording none of the 12 appropriations measures that Congress must pass this summer had been introduced.

**For more information:**

- We will continue to provide updates in future podcasts as the session progresses.
- You can also follow me on Twitter for daily updates.

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**POSSIBLE ENERGY AMENDMENT TO EXTENDERS BILL**

**Introduction**

- Rumors indicate that Sen. Maria Cantwell (D-Wash.) plans to offer an amendment to the extenders bill to extend the Treasury Department grant program that allows renewable energy developers to obtain grants in lieu of tax credits for certain projects.

**About the Amendment**

- The amendment would extend the Section 1603 program, created by the American Recovery and Reinvestment Act, through the end of 2012.
- Currently, the program is scheduled to expire at the end of 2010.
- To date, more than \$3 billion in grants have been awarded under the Section 1603 grant program.
- In addition to extending the program, the amendment would also expand the program to allow public utilities to qualify for grants.

**Conclusion**

- If the amendment is made to the extenders bill, the House would then be required to vote again on the package before it could be enacted.

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### **BUILD AMERICA BONDS UPDATE**

#### **Introduction**

- The Build America Bonds program, created by the American Recovery and Reinvestment Act, allows state and local governments to obtain financing at lower borrowing costs for new capital projects such as construction of schools and hospitals, development of transportation infrastructure, and water and sewer upgrades.
- Under the Build America Bonds program, the Treasury Department makes a direct payment to the state or local governmental issuer in an amount equal to 35 percent of the interest payment on the bonds.

#### **Update**

- On June 3rd, the U.S. Department of the Treasury released its monthly comprehensive update on Build America Bonds issuances, including state-by-state data, showing:
  - \$106 billion has been issued through May 31, 2010.
  - Build America Bonds now constitute 21 percent of the municipal bonds market
  - There have been a total of 1,306 separate issuances of Build America Bonds by local or state governments in 49 states, the District of Columbia and two territories.
- A complete list of issuances organized by state is available online at [www.ustreas.gov/press/releases/tg733.htm](http://www.ustreas.gov/press/releases/tg733.htm)

#### **Audit Rumors**

- BNA reports that a number of published reports indicate that as much as 50 percent of issuers of Build America Bonds will be audited by the Internal Revenue Service.
- However, according to BNA, the IRS said June 2 the actual number of examinations hasn't been determined yet and the process is not yet complete, including a review of a compliance check questionnaire that was sent in February. An additional questionnaire is scheduled to go to all issuers of the bonds in the next few weeks or months.
- It is likely that the IRS will conduct a significant number of audits of Build America Bond issuances.

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### HUD's 2007 "WORST CASE HOUSING NEEDS" REPORT

#### **Introduction:**

- Last month, the U.S. Department of Housing and Urban Development or HUD reported that 5.9 million households paid more than half their income for rent or lived in substandard housing in 2007.
- In a report to Congress, HUD found that these "worst case housing needs" grew significantly between 2001 and 2007.
- HUD's study, "Worst Case Housing Needs 2007: A Report to Congress," is the 12th in a series of reports designed to measure the scale of critical housing problems facing low-income American renting households.

#### **Findings:**

- Based on data from the American Housing Survey conducted between May and September of 2007, this report does not address much of the economic impact being felt by this population due to the current housing crisis. HUD expects that its next Worst Case Needs report will include those findings.
- HUD found that 5.91 million households had worst case housing needs in 2007 compared to 5.01 million in 2001.
- These needs are defined as renters with very low incomes (below half the median in their area) who do not receive government housing assistance and who either paid more than half their monthly incomes for rent, lived in severely substandard conditions, or both.
- In addition, HUD concluded that large numbers of worst case needs were also found across various family types including families with children, senior citizens, and persons with disabilities.
- Worst case needs were found across national regions and across central cities, suburbs and non-metropolitan areas.
  - In the West, 40 percent of very low-income renters had worst case needs in 2007,
  - while the incidence in the South was 37.4 percent and
  - 36.2 percent in the Northeast.
  - The Midwest had the lowest incidence, yet in this region too, more than one-third of very low-income renters, 34.3 percent, had worst case needs.

#### **In Related News:**

- On May 28, the Campaign for Housing and Community Development Funding (CHCDF) sent a letter to the Chairmen and Ranking Members of the Senate and House Appropriations Committees.

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- The campaign is a coalition of diverse organizations, including the National Council of State Housing Agencies or NCSHA, that are concerned with the housing needs of low- and moderate-income households and the nation's community development needs.
- In addition to NCSHA, the letter was signed by 31 national organizations.
- The group's letter urges the committees, as they make decisions about fiscal year 2011 appropriations allocations, to allocate enough budget authority to the Transportation-HUD Appropriations Subcommittee for a larger HUD budget.
- The letter describes how the recent economic downturn has highlighted the importance of affordable housing and how programs run by HUD address the need for affordable housing and community development.

#### **For More Information:**

- You can follow the progress of the HUD budget process and download a copy of the Worst Case Housing Needs report online at [www.hudresourcecenter.com](http://www.hudresourcecenter.com).
- If you have questions about applying for a HUD program or meeting compliance requirements for a HUD program, I encourage you to contact my partner Susan Wilson in our Austin, Texas at 512-340-0420.

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### **FINANCIAL SERVICES LEGISLATION**

#### **Introduction:**

- On May 20<sup>th</sup>, the Senate passed S. 3217, a measure to revamp the financial services industry.
- The Senate bill is called the Restoring American Financial Stability Act.
- The counterpart in the House is H.R. 4173, the Wall Street Reform and Consumer Protection Act, which was approved in December.

#### **About the legislation:**

- On March 15th, Sen. Christopher Dodd, chairman of the Senate Committee on Banking, Housing & Urban Affairs, released a draft of the legislation, after a failed attempt to draft a compromise bill that would earn bipartisan support.
- On April 19th, the Dodd bill was voted out of committee on a party-line vote, with no debate and no amendments offered.
- During weeks of procedural wrangling and heated partisan debate in the full Senate, roughly 400 amendments were prepared before cloture was invoked and the bill was passed.

#### **What the bill means for the tax credit community:**

- The National Council of State Housing Agencies reported last week that it has received assurances from his staff that Senator Dodd did not intend the bill's risk retention provisions to apply to municipal bonds, which we expected he would make that clear in the manager's amendment. NCSHA will now seek this clarification in the House-Senate conference.
- The Senate bill's risk retention provisions authorize federal regulators to require entities securitizing asset-backed securities (including mortgage-backed securities) to retain not less than 5 percent of the credit risk for any asset that is transferred, sold, or conveyed through the issuance of an asset-backed security. NCSHA, along with other bond stakeholder groups, advocated for an explicit exemption for municipal bonds, including housing bonds, from the definition of "asset-backed security."
- The Senate adopted a Landrieu-Isakson amendment, which requires the federal banking agencies, HUD, and the Federal Housing Finance Agency to jointly issue regulations exempting qualified residential mortgages with certain underwriting standards, such as high down payments and no prepayment penalties, from falling under the bill's 5 percent risk retention requirements.

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- NCSHA also reports that attempts to scale-back derivatives language authored by Agriculture Committee Chairwoman Blanche Lincoln were unsuccessful.
- While both the House-passed financial reform legislation, H.R. 4173, and the Senate-passed version require most derivatives to be traded through third parties, the Senate bill makes it harder for companies to receive exemptions.
- Another amendment on housing government-sponsored enterprises (GSEs) Fannie Mae and Freddie Mac was defeated during debate. Senator Mike Crapo offered an amendment to limit the bailouts of Fannie Mae and Freddie Mac and to enhance their oversight and regulation. The amendment would have re-established the bailout cap of \$200 billion per agency and would have required Fannie Mae and Freddie Mac to reduce their assets by at least 10 percent per year until they each owned no more than \$250 billion in mortgage assets.
- A provision referred to as the Volker Rule included in the Senate bill that would limit equity investments by financial institutions. This caused some concern about the impact on the tax credit market, but there is a general sense that the limitation would not apply to certain types of public welfare investments, such as low-income housing tax credit investments.

### **What's next:**

- The Dodd Bill now moves to conference committee, where House and Senate conferees will attempt to reconcile the provisions of the Senate Bill with the House version.
- The outlines of the bills are similar, but significant differences remain.
- On May 25, 2010, Senate Democrats named the Senate conferees who will negotiate the final version of the bill. The conferees include seven Democrats and five Republicans.
- The House conferees will likely be named in early June. A final bill is expected to be voted on in late June or early July.
- Congressional leaders hope to send the final version of financial reform legislation to the President by the July 4 recess.

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### **LIHTCS COME INTO FOCUS IN IOWA SENATE RACE**

#### **Introduction**

- Three democrats are running for the party nomination in Iowa for the opportunity to challenge Senator Grassley, the Ranking Member on the Senate Finance Committee, in the November elections.

#### **Question About LIHTCs Raised in Debate**

- During a forum last week, the candidates were allowed to ask one another questions. Tom Feigen, a Clarence, Iowa bankruptcy lawyer also running in the primary, asked U.S. Senate candidate Roxanne Conlin about her investments in claiming the tax breaks associated with 27 low-income apartment complexes.
- Candidate Roxanne Conlin is a developer and part owner of 27 low-income housing tax credit apartment properties.
- Conlin had challenged Sen. Grassley's acceptance of federal farm subsidies, so Feigen questioned how she could question Sen. Grassley's acceptance of federal farm subsidies if she personally accepted federal subsidies to build low-income housing.
- Conlin responded by noting that the LIHTCs don't really benefit her, but rather are used to raise capital to build housing for those in need.
- She also clarified that her opposition to tax benefits for the wealthy pertains primarily to the Bush tax cuts of 2001 and 2003 tax cuts, which she noted are distinctly separate from the use of LIHTCs.

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### **MASSACHUSETTS STATE TAX CREDIT BILL**

#### **Introduction:**

- Last week the Massachusetts Senate approved an amendment to the new state budget, that would require the state to publish reports on each tax credit program.
- The reports would include the identity of each taxpayer, the amount of tax credits received, the date of the award, and additional data.
- The House approved a similar proposal last month.
- Governor Deval Patrick has included a public disclosure measure with his budget proposals for the past two years.

#### **About the Provision:**

- While information on some state tax credits is already public, because they must be approved by a separate state board or agency, most state tax credits are handled solely by the Department of Revenue, which would be required to disclose the recipients for all refundable tax credits if the proposal is enacted.
- The largest refundable tax incentive is for the movie industry; the film tax credit in particular has garnered controversy because of its impact on the state budget.
- A state Department of Revenue study estimated that the state film tax credit generated 16 cents in new tax revenue for every \$1 given up in tax credits.
- The state Department of Revenue reports that refundable state tax credits amount to about \$245 million in lost tax collections annually.

#### **Conclusion:**

- With last week's Senate passage, the reforms are now included in both the House and the Senate's fiscal year 2011 budgets, which will be finalized in a conference committee.

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### **STATE TAX CREDIT MORATORIUM IN OKLAHOMA**

#### **Moratorium:**

- Last month, in the face of a \$1.2 billion revenue shortfall, Oklahoma's Legislature approved Senate Bill 1267.
- Senate Bill 1267 would place approximately 30 state tax credits under a two-year moratorium starting July 1<sup>st</sup>.
- The State Tax Commission estimates the moratorium would bring in about \$25.7 million to state coffers for fiscal year 2011.
- In 2012 the suspension is expected to increase tax collections by \$50 million.

#### **Carve Out Bill:**

- A consortium of preservationists, bankers, developers, architects, builders, chambers of commerce, large cities like Tulsa and Oklahoma City and smaller towns across the state campaigned to exempt the state's historic tax credit from the moratorium.
- Preservation Oklahoma and Oklahoma Historical Society Director Bob Blackburn told the *The Oklahoman* that 37 development projects using historic tax credits would have been affected by the moratorium.
- In the final hour of the legislative session last week, lawmakers passed a House Bill 3024.
- The measure by Rep. Jeff Hickman and Sen. Mike Mazzei changes the moratorium to a two-year *deferral* for tax credit payments for wind power, historic property renovations and businesses that invest infrastructure and add employees.
- This means developers will still be able to claim the tax credits — though with a two-year delay.
- *The Oklahoman* reports that House Speaker Chris Benge said keeping those tax credits in place also encourages future investment in Oklahoma.
  - "We wanted to honor projects already in the pipeline," Benge said. "We didn't want to send the wrong message. We wanted to promote business development in Oklahoma."
- The exemption for the tax credits amount to an impact of about \$17 million. Of that, the investment and new jobs tax credit accounts for \$14 million.

#### **Conclusion:**

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- At the time of this recording Governor Brad Henry had not yet signed House Bill 3024.
- Copies of both bills can be found at the Novogradac Historic Tax Credit Resource Center web site. The address is [www.historictaxcredits.com](http://www.historictaxcredits.com). Just click on State Legislation in the Legislation menu.
- You can also stay current on the latest state tax credit news by subscribing to the Novogradac Journal of Tax Credits, which has a section dedicated to the latest state tax credit news, as well as news about low-income housing tax credits, new markets tax credits, historic tax credits and tax credits for renewable energy. Learn more about the Journal at [www.novoco.com](http://www.novoco.com) slash products. Or call us at (415) 356-7960.

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**TAX CREDIT CALENDAR**

- The New Markets Tax Credit Coalition will present a Congressional Briefing on the 2010 New Markets Tax Credit Progress Report Wednesday, June 9th, 2010 at 4:30pm Cannon House Office Building, Room 122. The briefing will be followed by a reception at 5:30pm at the U.S. Capitol Building, Room H-137.
- Also on June 9<sup>th</sup> the Housing Advisory Group's (HAG) Annual Affordable Housing will hold its Congressional Forum in Washington, D.C. To learn more about the day's events and download a registration form, go to [bostoncapital.com](http://bostoncapital.com), click on About Boston Capital and then click on Industry Advocacy.
- Novogradac & Company LLP will host a New Markets Tax Credit Conference on June 10-11. More than 350 professionals are registered. There's still time to join the event. Simply go to [www.novoco.com/events](http://www.novoco.com/events).
- Several state housing events are also scheduled for the coming weeks:
  - Massachusetts Housing Institute will be held on June 9<sup>th</sup> and 10<sup>th</sup>
  - the 2010 Montana Housing Partnership Conference will be presented on June 15<sup>th</sup> through 17<sup>th</sup>, and
  - the 2010 Pennsylvania Housing Services Conference will occur on June 16<sup>th</sup> and 17<sup>th</sup>
- The following, the National Council of State Housing Agencies (NCSHA) and Affordable Housing Investors Coalition (AHIC) meetings will be held in Chicago.