

Novogradac Report on Tax Credits **Summary: June 16, 2010**

Michael J. Novogradac, CPA, shares information released by the CDFI Fund regarding demand for new markets tax credits in the 2010 application round, summarizes two revenue rulings released by the IRS regarding the new markets tax credit program, reviews the status of tax credit extender legislation, discusses the FHFA's proposed rule for the GSE's duty to serve underserved markets, and updates listeners on expected award dates for the Capital Magnet Fund.

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DEMAND FOR 2010 NMTC ROUND

Introduction

- On June 8th, the Community Development Financial Institutions (CDFI) Fund announced that it received a total of 250 applications under the 2010 round of the New Markets Tax Credit program.

Key Figures

- The application deadline for the 2010 round was June 4.
- Applicants requested \$23.5 billion in NMTC allocation authority.
- A total of \$5 billion of allocation authority is available this round, pending Congressional approval.
- Through the first seven rounds of the NMTC program, the CDFI Fund has made 495 awards totaling \$26 billion in tax credit allocation authority.

Conclusion

- The CDFI Fund anticipates announcing the organizations that will receive NMTC allocations in December.

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TWO POSITIVE REVENUE RULINGS RELATED TO THE NEW MARKETS TAX CREDIT

Introduction

- On June 8th the Internal Revenue Service released two revenue rulings that address the new markets tax credit program.
- Specifically, the guidance discusses passive activity credit and recourse loans related to limited liability companies' qualified equity investments, or QEIs, in qualified community development entities or CDEs.

About the Rulings

- In Revenue Ruling 2010-16 the IRS addresses whether the NMTC is disallowed under the passive activity credit rules for certain investors.
 - Based upon the situations provided in the Revenue Ruling, the IRS says the NMTC would not be disallowed, which clarifies the ability of certain investors to claim the credit.
 - The ruling provides that, for purposes of determining the new markets tax credit allowable under §45D, the amount of the qualified equity investment made by an LLC classified as a partnership includes cash from a recourse loan to the LLC that the LLC invests as equity in a qualified community development entity.
- In Revenue Ruling 2010-17, the IRS concludes that the amount of the QEI made by an LLC classified as a partnership includes cash from a recourse loan to the LLC that the LLC invests as equity in a qualified CDE.
- **Learn More**
The IRS will publish the rulings in Internal Revenue Bulletin 2010-26 on June 28th.
- In the meantime, you can download copies of the rulings from www.newmarketscredits.com.
- This new guidance will also be discussed in the NMTC Q&A column in the July issue of the Novogradac Journal of Tax Credits. If you'd like to subscribe, or review a sample copy of the Journal, just send an e-mail to products@novoco.com or call 415-356-7960.

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TAX EXTENDERS UPDATE

Introduction

- Upon reconvening from its Memorial Day district 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 8th, 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.

Senate Amendment

- The Senate substitute amendment did not modify any of the provisions related to the low-income housing tax credit or new markets tax credit. As it stands now, the extenders bill will still:
 - extend for one year the Section 1602 low-income housing tax credit cash grant exchange program,
 - extend for one year the New Markets Tax Credit program,
 - allow the NMTC to offset the alternative minimum tax with respect to qualified investments made between March 15, 2010 and January 1, 2012
 - provide \$1 billion to fund the National Housing Trust Fund (NHTF), and
 - extend by two years the placed-in-service date for Gulf Opportunity (GO) Zone LIHTCs.
- The substitute amendment did modify the carried interest tax provision in the House-passed bill.
- The Senate amendment also added back Medicaid spending that had been pulled by the House for cost-cutting purposes in May.
- On June 9th, the Senate Finance Committee released additional documents related to Senate Amendment 4301. The documents include
 - a summary of the amendment,
 - a summary of changes made by the amendment,
 - and estimates from the Congressional Budget Office (CBO) budget and Joint Committee on Taxation (JCT) of the budget effects of the amendment.
- The Senate heard debate and allowed amendments to be introduced to the bill last week and resumed consideration of the measure again this week.

What's Next

- At the time of this recording Democratic leaders said they were still short of the 60 votes needed to pass the bill.

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- Officially, the House and Senate still state July 3rd as the deadline to pass the final bill and sent it to the president for his signature before the July 4th state work period.
- However, according to some lawmakers believe it could be optimistic to think the extenders bill will be completed before July 5th.
- Speaking to Novogradac & Company's New Markets Tax Credit Conference last week in Washington, D.C., Ways and Means Committee member Pat Tiberi of Ohio said that Congress "probably" will not pass the extenders bill until after July 4th and lawmakers may have to act to extend soon-to-expire provisions beforehand.
- Congressman Tiberi told the group of tax credit professionals that there is not only disagreement between the two parties as to how the legislation should proceed—the Democratic leadership in both chambers also disagree about the size of the bill.
 - He said this quote "probably means that this is not yet ready to come back any time this month for some sort of solution in passing an extenders bill on to the president for his signature. The list of must-pass issues continues to get longer, the days that we're in session continue to get shorter—I don't know how it gets done between now and the election," he continued. "It's going to be tough." close quote
- On a related note, Congressman Tiberi also told Novogradac conference attendees last week that there is bipartisan support for the new markets tax credit, but getting a permanent extension of the credit passed this year will be tough.
- He noted that Congress has several short-term goals, such as finishing a tax extenders package and keeping the NMTC in the extenders package for its duration, as well as long-term goals, such as addressing permanency of the NMTC and dealing with the alternative minimum tax. Tiberi said that the NMTC being tied to the AMT is an important issue and is "still in play."

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FHFA PROPOSES RULE ON GSE REQUIREMENTS FOR UNDERSERVED MARKETS

Introduction

- Last week the Federal Housing Finance Agency, or FHFA, sent a proposed rule to the Federal Register regarding Fannie Mae's and Freddie Mac's duty to serve specific markets.
- Basically, the rule would implement certain provisions of the Housing and Economic Recovery Act of 2008, also known as HERA.

About the Rule

- HERA established a duty for Fannie Mae and Freddie Mac to serve very low-, low- and moderate-income families in three specified underserved markets:
 - manufactured housing,
 - affordable housing preservation, and
 - rural markets.
- The proposed rule, implementing HERA's pre-conservatorship provisions, would require Fannie Mae to take actions to increase the liquidity of mortgage investments and improve the distribution of investment capital available for mortgage financing for underserved markets while adhering to the requirements of conservatorship.
- As described in the proposed rule, while the GSEs remain in conservatorship, they are expected to continue to fulfill their core statutory purposes, which include their support for affordable housing.
- FHFA's approach is to limit the proposed rule to existing core business activities at the GSEs and to require that they not engage in new lines of business as a result of the proposed duty to serve rule.
- The proposed rule would also establish a method for evaluating and rating Fannie Mae's and Freddie Mac's performance in each underserved market for 2010 and subsequent years.
- The proposal also describes the transactions and activities that would be considered for compliance.
- The GSEs would be evaluated on four statutory assessment factors:
 - 1) the development of loan products, more flexible underwriting guidelines, and other innovative approaches to providing financing;
 - 2) the extent of outreach to qualified loan sellers and other market participants;

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- 3) the volume of loans purchased relative to the market opportunities available, subject to the statutory condition that FHFA not establish specific quantitative targets; and
 - 4) the amount of investments and grants in projects that assist in meeting the needs of the underserved markets.
- Under the proposed rule, Fannie Mae and Freddie Mac would be required to provide an underserved markets plan. They would be evaluated against that plan annually and rated “satisfactory” or “unsatisfactory” for assessment factors in each underserved market.
 - FHFA would then rate Fannie Mae’s and Freddie Mac’s overall duty to serve performance for each underserved market as “in compliance” or “noncompliance.”

Conclusion

- Written comments will be accepted on the proposed rule through July 22nd.
- A copy of the proposed rule and a statement from the FHFA can be downloaded from www.novoco.com. Simply click on the Hot Topics button and then select the link for GSE Conservatorship in the section labeled LIHTC Hot Topics.

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CAPITAL MAGNET FUND AWARDS COMING SOON

Introduction

- The Community Development Financial Institutions (CDFI) Fund is currently reviewing the 230 applications it received for the fiscal year (FY) 2010 funding round of the Capital Magnet Fund.
- The CDFI Fund expects to announce the awards by the end of September.

Refresher on the Capital Magnet Fund

- The CDFI Fund published a Notice of Funds Availability in the Federal Register on March 4th, announcing \$80 million available for the FY 2010 funding round.
- The deadline for applications was April 15, 2010. The 230 applications received included 119 from nonprofit housing corporations and 16 public housing authorities. In addition, 99 certified CDFIs applied for funding.
- The applications are being evaluated through a merit-based qualitative review process to identify those applicants most likely to have the greatest impact.
- The 230 applicants requested an aggregate total of approximately \$1 billion to fund projects with projected eligible project costs of \$23.3 billion.
- Applications were received from organizations serving 46 states, the District of Columbia and Puerto Rico, identifying proposed housing projects in 49 states, the District of Columbia and Puerto Rico.
- Applicants proposed a range of activities including new multifamily construction, single-family mortgage programs, multifamily rehabilitation, single-family rehabilitation, new single-family construction and multifamily housing preservation projects.

For more information:

- To learn more about the Capital Magnet Fund, I encourage you to contact my partner Diana Letsinger in Novogradac & Company's Long Beach, Calif. office at (562) 432-9482.
- You can also go to www.newmarketscredits.com, and click on News and in the News tab select Hot Topics. From there, select the link for the Capital Magnet Fund.

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TUNE IN NEXT WEEK FOR:

- **Annual Report: State of the Nation's Housing**

Harvard's Joint Center for Housing Studies released its 22nd annual report on the state of the nation's housing report. This report is released annually and provides an assessment of the nation's housing outlook, as well as reviewing important trends in the economics and demographics of housing.

- **NMTC Coalition's Annual Report on the NMTC**

- **House Passed Small Business Tax Bill**

- **Tax Extenders Update**