

Novogradac Report on Tax Credits
Summary: June 22, 2010

Michael J. Novogradac, CPA, shares and update on tax extenders legislation, reviews the jobs tax bills being considered in Congress, summarizes the results of Harvard's Joint Center for Housing Studies' annual State of the Nation's Housing report, discusses the significance of Fannie Mae and Freddie Mac being delisted from the New York Stock Exchange, and updates listeners on the Tax Credit Calendar.

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TAX EXTENDERS UPDATE

Introduction

- Extenders legislation stalled again last week, despite continued efforts to garner support.
- On June 16th, the Senate defeated a procedural motion to advance Senator Baucus's first substitute tax extenders bill, Senate Amendment 4301.
- Following that defeat, Senator 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.
- However, at the time of this recording, the current version of the bill has not garnered enough support to pass the Senate.

Changes

- Fortunately, the LIHTC exchange program extension and other provisions we've detailed in previous podcast are retained in the current bill.
- Furthermore, 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 Senate version of the extenders bill included provision to expand the LIHTC exchange program to make GO Zone and Disaster Area tax credits eligible.
- On June 16th, Sen. Maria Cantwell, D-Wash., proposed an amendment to the pending tax extenders bill that would extend Section 1603 renewable energy tax credit cash grant program through the end of 2012.
 - 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.
 - 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.
 - At the time of this writing, the Cantwell amendment to extend the Section 1603 program was not included in the larger extenders bill.

What's Next

- While final passage of the bill has taken considerably longer than originally projected, it does not appear at this point that any of the affordable housing provisions or the new markets tax credit provisions are at risk of being excluded.
- For updates, follow Mike Novogradac on Twitter: @Novogradac.

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SMALL BUSINESS JOBS TAX BILL

Introduction

- On June 15th the House of Representatives approved H.R. 5486, the Small Business Jobs Tax Relief Act of 2010, by a bipartisan majority of 247-170.
- It's likely that the Senate will take up it's own small business jobs tax bill shortly after finishing consideration of the extenders bill.

About the Bill

- The House legislation would provide tax cuts for small businesses to help them grow and create new jobs.
- H.R. 5486 is companion legislation to H.R. 5297, the Small Business Jobs and Credit Act, which will enhance lending opportunities for small businesses.
- Both pieces of legislation are fully offset by closing existing tax loopholes and is not projected to add to the deficit.

Provisions in the Small Business Jobs Tax Relief Act include:

- An increase in the small business stock capital gains exclusion: The bill builds on the work done in the Recovery, and increases the capital gains exclusion on investments in small business stock to 100 percent (from 75% done in the Recovery Act).
- Small business tax penalty relief: The bill would alleviate certain tax penalties on small businesses that can often be dramatically disproportionate.
- An increased deduction for start-up costs: The bill would allow small businesses to deduct up to \$20,000 in small business start-up expenses. Supporters say the bill will provide greater security and cashflow to grow their businesses and hire new workers.
- A provision to treat SBA non-recourse loans as at-risk: The bill would allow non-recourse SBA loans to qualify for certain exceptions to the at-risk loan rules, allowing business expenditures made under those loans to be deductible against related business income.

LIHTC Consensus Proposals

- The A.C.T.I.O.N campaign reported last week that Senate Finance Committee staff continue to react favorably to Sen. Jeff Bingaman's (D-NM) efforts to include the LIHTC carryback proposal in the Senate small business jobs tax bill.
- However, while the Senate continues to seriously consider the proposals for the small business jobs bill, it is clear that Congressional concerns about the deficit, lack of non-controversial off-setting pay-fors, and the busy legislative calendar, make passage of this legislation is uncertain.

More information

- Several resources related to H.R. 5486, including the bill text, a summary, and revenue estimates from the Joint Committee on Taxation are available online at www.novoco.com by clicking on Hot Topics.

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STATE OF THE NATION'S HOUSING REPORT 2010

Introduction

- Despite some positive signs early in the spring buying season this year, housing continues to face significant challenges, according to the State of the Nation's Housing report released on June 14 by the Joint Center for Housing Studies of Harvard University.
- The report found that the challenges facing the housing industry include
 - elevated vacancy rates,
 - record foreclosures,
 - the expiration of the homebuyer tax credit for single family homes, and
 - continued high unemployment.

Key Findings

- The report warns that even if the recovery in sales and residential construction flourishes, the adverse consequences of the recession and the financial crisis will linger.
- Despite falling home prices, loan modifications, and softening rents, the downturn did not reduce the number of households spending half or more of their income on housing; the Joint Center for Housing Studies says the number of households spending half or more of their income on housing was 18.6 million in 2008.
- Both sales and starts of multifamily properties also came to a standstill in 2009. The report says that just 180,000 units in properties worth at least \$5 million were sold last year, compared with 941,000 at the 2006 peak.
- Multifamily starts dropped from 284,000 units in 2008 to 109,000 in 2009—their lowest level on record.
- But because completions of multifamily housing lagged behind starts, falling only from 301,000 to 274,000, as such the rental market has yet to register the full effects of the near-cessation of production.

More information

- The full report can be downloaded from www.jchs.harvard.edu.
- The report will be examined in detail in the August issue of the Novogradac Journal of Tax Credits.

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FHFA DIRECTS DELISTING OF FANNIE MAE AND FREDDIE MAC STOCK FROM NEW YORK STOCK EXCHANGE

Introduction

- Last week the Federal Housing Finance Agency directed Fannie Mae and Freddie Mac to delist their common and preferred stock from the New York Stock Exchange and any other national securities exchange.

About the Delisting

- Once the delisting is completed, each enterprise's common and preferred stock is expected to be quoted on the Over-the-Counter Bulletin Board.
- Each enterprise's common stock price has hovered near the New York Stock Exchange minimum average closing price requirement of \$1 over 30 trading days for most months since the conservatorships were established in September 2008.
- Most recently, Fannie Mae's closing stock price has been below the required \$1 average price for the past 30 trading days.
- Per NYSE rules, a company in that condition must either drop from the exchange or undertake a 'cure' to restore the stock price above the \$1 mark if it does not meet the NYSE's minimum price requirements.
- The alternatives for putting in place such a cure do not assure maintaining the minimum price level or avoiding loss of shareholder value.

What this Means

- The Wall Street Journal's analysis last week says the move should remove lingering doubts about whether these are independent companies that have any residual value.
- That said, FHFA Acting Director Edward J. DeMarco said last week that FHFA's determination to direct each company to delist does not constitute any reflection on either enterprise's current performance or future direction, nor does delisting imply any other findings or determination on the part of FHFA as regulator or conservator.
 - "A voluntary delisting at this time simply makes sense and fits with the goal of a conservatorship to preserve and conserve assets," said DeMarco.

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TAX CREDIT CALENDAR

CA State NMTC

- Tomorrow, June 23rd, the California Senate Taxation & Revenue Committee will hold a hearing to consider the creation of a state new markets tax credit program.
- Senate Bill 1316 would establish a state new markets tax credit modeled after the federal credit.
- The new program would be funded by phasing out the portion of the state's 1031 like kind exchange program awarding credits for out-of-state properties.
- As proposed, the California New Markets program would provide for \$25-28 million in new markets tax credits.

NCSHA's 2010 Housing Credit Conference and Marketplace

- This week NCSHA convenes the housing tax credit allocating agency as well as tax credit professionals, federal program regulators, developers, lenders, syndicators, investors, tax advisors, property managers, compliance experts, and not-for-profits and numerous other participants in the tax credit community.
- I will be speaking on two panels
 - On Wednesday, June 23rd, I will participate in a panel called "Ask the Legal and Accounting Experts" where I will answer the top legal and accounting questions I encounter working with HFAs.
 - On Thursday, June 24th, I will take part in the panel, "Creative Restructuring Strategies." We will discuss how to reposition developments and handle workouts of troubled older deals, including "underwater" multifamily mortgages in declining markets.
- Also, my partner George Littlejohn from our Austin office will participate in two panels, one called "Making Sense of Income Limits" and another called "Conquering Compliance Complexities."