

Novogradac Report on Tax Credits **Summary: July 13, 2010**

Michael J. Novogradac, CPA, reviews what is expected from Congress in the coming weeks, covers the upcoming CRA hearings, and shares information on FHA underwriting changes and Fiscal Year 2011 HUD and Rural Housing appropriations. He also discusses a proposal to expand the NMTC program and legislation to create a geothermal tax credit. Finally, he reviews the tax credit calendar and closes with some tax credit tidbits.

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CONGRESSIONAL UPDATE

The Senate and House recess is over and they return to D.C. this week.

Small Business Lending Fund Act

- Upon their return, Senators are expected to continue to work on a small business lending and tax bill, specifically the Small Business Lending Fund Act (H.R. 5297).
- A number of amendments are pending to that bill, including a substitute amendment (S. Amdt. 4402) which carries roughly \$12 billion in tax cuts aimed at small businesses.
 - This amendment includes a provision to extend bonus depreciation tax incentives through the end of 2010.
 - The substitute amendment also would allow for an increase in tax code Section 179 expensing limits for certain restaurant and retail real property.
- The amendment has a 5 year carryback for general business credits generated in 2010 by small businesses. Efforts are underway in the affordable housing community to expand this provision beyond small businesses and beyond those credits generated in 2010. I am personally engaged in those efforts.
- Senate Majority Leader Harry Reid (D-Nev.) has not said when he expects to complete consideration of the small business bill.
- The bill is expected to pass the senate, as the Senate invoked cloture to proceed to the bill before the recess, 66-33, with eight Republicans voting in favor of the motion. As such, the bill only needs a majority vote to pass the senate.
- One item still to be worked out is whether this bill will be a vehicle to address other tax, such as the expiration of the 2001 and 2003 Bush tax cuts.
- According to Obama spokesman Robert Gibbs, congress will likely wait until after the August recess to consider extension of the expiring 2001 and 2003 "Bush" tax cuts.
- For updates on the small business bill this week, you can follow me on Twitter.

Other items in the House

- The House will be working on other legislative items, as it awaits the Senate to complete its work on the small business bill.
- In other matters, as I previously mentioned in a tweet last week, the Senate Finance Committee meets July 14 for a hearing on the future of individual tax rates.

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- The hearing will focus on the effect that tax rates have on economic growth and income distribution. The hearing begins at 10 a.m. in Room 215 of the Dirksen Senate Office Building.
- On the House side, the House Small Business Committee will hold a hearing on July 14 hearing regarding bonus depreciation tax incentives.
- The committee will examine how these tax incentives help small businesses expand operations, promote economic growth, and aid in job creation.
- The hearing will be held at 1 p.m. in Room 2360 of the Rayburn House Office Building.

Financial Reform

- Many of our listeners are interested in financial reform legislation.
- Senate Democrats will also push to approve the financial reform conference report.
- Over the recess, Democrats figured that they needed two Republican votes, and it appears that they have them in Republican Senators Scott Brown and Olympia Snowe.
- The two Republican votes are needed to invoke cloture and avoid a filibuster.
- The House passed the conference report, 237-192, on June 30.

Other items in the Senate

- In other Senate business, Sen Reid intends to bring an energy bill to the Senate floor this month. It is unclear what will be included in the measure.
- Congress Daily is reporting that Senators will be presented with options of what could make up the ultimate package this week.
- Aides are predicting a floor debate on the legislation for either the last week in July or early August.
- Reid has also said he would bring energy legislation to the floor before the debate over Elena Kagan's nomination to the Supreme Court.
- Staffers for Senate Energy and Natural Resources Chairman Jeff Bingaman, and Sens. John Kerry, Richard Lugar, and Olympia Snowe, among others, have been working with Reid's staff and each other during the recess on possible components of the bill.
- Whether the bill includes a price on carbon emissions remains a question mark, but there a consensus is developing that Reid might move forward with an energy-only bill, a mandate that promotes the use of renewables and other types of clean energy sources that could become the core part of a package in lieu of carbon pricing.
- Such legislation would likely also include expansion of the Section 48C advanced energy manufacturing tax credit.

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- President Obama, on July 9 again urged Congress to pass such an expansion of the Section 48C tax credit.
- President Obama has it in his budget proposal and legislation to accomplish this has been introduced.
- President Obama touted the tax credit in a speech in Las Vegas alongside Senate Majority Leader Harry Reid last week. The president said the credit already has had an extraordinary impact on the manufacturing sector. To date, more than 180 projects in more than 40 states have received the credit, he said.

Conclusion

- The determination as to when extenders and unemployment insurance extension legislation will again be considered by the Senate.
 - I will tweet as soon as I know something substantive as to timing.

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**PUBLIC HEARINGS TO BE HELD ON COMMUNITY
REINVESTMENT ACT REGULATIONS**

As mentioned in an earlier podcast, federal bank and thrift regulatory agencies will hold a series of upcoming public hearings on modernizing the regulations that implement the Community Reinvestment Act or CRA.

- The hearings are intended to consider
 - how to update the regulations to reflect changes in the financial services industry,
 - changes in how banking services are delivered to consumers today, and
 - current housing and community development needs.

- The first of four hearings is next week, July 19th in Arlington, Virginia;
- The second hearing moves further south to Atlanta and is on August 6th;
- From there, the third hearing is on August 12th in Chicago; and
- The fourth scheduled hearing is on the west coast on August 17th in Los Angeles.

We encourage our listeners to attend, participate in and submit oral and written comments on ways to improve the operation and effectiveness of the Community Reinvestment Act, particularly as it relates to affordable housing, community development, historic preservation and renewable energy.

On a Related Note

- With his five-year term drawing to a close, Comptroller of the Currency John C. Dugan announced last week that he plans to leave office on August 14th.
- In announcing his departure, Mr. Dugan noted that the banking system had strengthened considerably since the worst days of the economic crisis, when its very viability seemed in question.
- Now, he said, the condition of the national banking system is much, much improved, with credit trends getting better in a number of areas.

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CHANGES TO FHA UNDERWRITING

Let's turn our attention now to affordable housing

- Last week the U.S. Department of Housing and Urban Development announced a series of changes to the Federal Housing Administration's multifamily insurance programs to:
 - update underwriting policies,
 - increase lender and underwriter quality, and
 - align loan application, submission and approval standards.
- HUD says the policy changes will include:
 - revised underwriting standards,
 - enhanced verification of property financial performance,
 - expanded borrower mortgage credit analysis, and
 - pre-screening of proposals.

You can find details about the changes in Mortgagee Letter 2010-21. The letter can be found online at our web site at www.hudresourcecenter.com.

- HUD says the change included in the new guidance will affect all multifamily rental programs.
- HUD says revised underwriting standards will
 - raise debt service coverage ratios,
 - lower loan to value and loan to cost ratios,
 - increase project reserves and sponsor equity investment, and
 - limit sponsor cash out.
- In addition, HUD says underwriting ratios will be targeted to different property types based on their risk profiles, with lower ratios for subsidized affordable housing properties and higher ratios for market rate properties.
- HUD says the enhanced verification of property financial performance is intended to decrease opportunities for misrepresentation and fraud.
- Borrower mortgage credit analysis will be expanded to include a detailed review of contingent liabilities and ballooning term debt that could undermine a sponsor's financial stability.
- And finally, HUD says pre-screening of proposals for early identification of transactions that are not feasible or are not likely to proceed to a commitment will allow staff to focus on a deeper analysis of transactions that will close.

In addition to the changes outlined in last week's mortgagee letter, HUD says that FHA's multifamily programs will be pursuing additional steps to update agency standards.

These changes will be made through additional mortgagee letters as well as through the rulemaking process.

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For more information

- The guidance provided in Mortgagee Letter 2010-21 will be discussed in detail in an upcoming issue of the Novogradac Journal of Tax Credits. These changes will affect the feasibility of all FHA financed properties.

- In the meantime, in addition to reviewing the letter online at www.hudresourcecenter.com, you can contact my partner Susan Wilson in our Austin office for more details on how these changes will affect your FHA financed transactions.

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HUD AND RURAL HOUSING APPROPRIATIONS

In other affordable housing news Congressional Subcommittees have been acting on HUD and rural housing Appropriations bills:

- On June 30th, the House Appropriations Agriculture and Rural Development Subcommittee marked up its fiscal year 2011 appropriations bill.
 - The Subcommittee provided \$1.3 billion for rural housing service loans and grants.
 - This is \$102 million below the amount enacted in FY 2010 and
 - \$72 million above the President's request.
- On July 1st, the House Appropriations Transportation-HUD Subcommittee marked up and passed its fiscal year 2011 appropriations bill.
 - Under the subcommittee-passed bill, HUD would receive a total \$49.5 billion
 - This is \$2.6 billion more than enacted in FY 2010 and
 - \$1 billion more than the President's request.
 - According to the summary chart provided at the markup, the Subcommittee-passed bill provides \$1.8 billion for the HOME program.
 - That is the same amount enacted in FY 2010 and
 - \$175 million more than the President's request.
 - The bill provides \$17.2 billion for Section 8 tenant-based rental assistance renewals.
 - This is \$886 million more than enacted in FY 2010 and
 - \$85 million below the President's request.
 - The bill provides \$9.4 billion for the Section 8 project-based rental assistance program.
 - This is \$831 million more than enacted in FY 2010 and
 - the same as the President request.
 - The bill does not provide any funding for the Administration's proposed Transforming Rental Assistance (TRA) program.
 - The Subcommittee bill provides \$4.4 billion for the Community Development Block Grant (CDBG) program.
 - That's \$98 million less than in FY 2010 and
 - \$28 million below the President's request.
 - The Subcommittee ignored the President's request to eliminate the HOPE VI public housing revitalization program and replace it with the Choice Neighborhoods Initiative.
 - Instead, the subcommittee voted to fund HOPE VI at \$200 million
 - That amount is \$65 million more than in FY 2010.
 - The bill does not include funding for the Choice Neighborhoods Initiative.

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GULF OIL NEW MARKETS TAX CREDITS

- Last week Senator Mary Landrieu of Louisiana proposed a package of tax breaks for those hit hard by the oil spill in an effort to help some of the small businesses along the Gulf Coast.
- Senator Landrieu was joined by a bipartisan group of four other lawmakers:
 - Sen. Bill Nelson of Florida,
 - Sen. Roger Wicker of Mississippi,
 - Sen. George LeMieux of Florida and
 - Sen. David Vitter of Louisiana.
- In addition, The Senators' proposal is similar in aim to one also offered last week in the House by Representative Jeff Miller of Florida.
- The proposal includes, among other things, a special allocation of new markets tax credits (NMTCs) for the oil spill recovery zone.
- The senators say that—similar to allocations of NMTC authority that were made following hurricanes Katrina and Rita—a special allocation of NMTCs, spread over a 2-year period, should be made to the oil spill recovery zone to contribute to the region's economic recovery.
- The proposal would also
 - allow for tax credits for Gulf coast businesses that hire workers displaced by the oil spill,
 - enact a temporary program to reimburse Gulf states for revenue losses if they adopt a hotel or car rental tax holiday.
 - extend the net operating loss (NOL) carryback period,
 - provide small business owners and other taxpayers suffering economically as a result of the oil spill hardship access to retirement savings, and
 - enhance small business expensing allowance for oil spill recovery zone
- The bipartisan group sent a letter last week to Senate Finance Committee leadership urging them to consider quickly enacting the package
- The bipartisan nature of the group - five Senators coming from across the political aisle and across the Gulf - sends a strong signal to congressional leadership that there is broad support for such a measure.
- We will track the proposal's progress and keep you updated in future podcasts.

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**CONGRESSMAN BLUMENAUER INTRODUCES BILL TO SPUR
DEVELOPMENT OF GEOTHERMAL ENERGY**

On June 28th, Congressman Earl Blumenauer of Oregon introduced legislation to provide a 30 percent investment tax credit for geothermal energy through December 31st, 2016.

About Geothermal

- Geothermal energy is energy generated by the natural heat of the earth.
- Supporters say that once installed, geothermal power is incredibly reliable and geothermal energy resources are present in all 50 states.
- In California more than 40 geothermal plants provide nearly five percent of the state's electricity.

More information

- A copy of the Geothermal Energy Investment Act, H.R. 5612, can be downloaded from www.energytaxcredits.com.
- To learn more about renewable energy tax credits, call Stephen Tracy, CPA, in our San Francisco office at (415) 356-8000.

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TAX CREDIT CALENDAR

On July 15th, Pepper Hamilton will present a free webinar on Financial Services Reform legislation. The webinar, entitled **What the Financial Services Reform Legislation Means for You** is from noon to 1:30 p.m. The webinar will review:

- new consumer protection requirements,
 - corporate and securities law developments,
 - new resolution authority of the Federal Deposit Insurance Corporation,
 - the new Financial Stability Oversight Council's powers to act as a "systemic risk regulator," and
 - implications for non-financial services businesses.
- In two weeks, the **Texas Housing Conference** will be held on July 26th-28th at the Four Seasons Hotel in Austin, Texas.
 - The Texas Housing Conference brings together more than 500 housing professionals from across the nation
 - Visit www.taahp.org to learn more about the Texas Affiliation of Affordable Housing providers.
 - For those of you attending, I encourage to say hello to my partners George Littlejohn and Susan Wilson from our Austin office. They are active in TAAHP and will be at the conference, along with other Novogradac professionals.
 - This is the premier Texas low-income housing tax credit conference.

5th Annual Green Homes & Sustainable Communities Conference

- The end of that week, on July 29th-30th, IPED will host its 5th Annual Green Homes & Sustainable Communities Conference in Washington, DC.
- Two Keynote Speakers were announced last week:
 - HUD Secretary Shaun Donovan
 - and
 - Congresswoman Anna G. Eshoo.

2010 AHTCC Fall Meeting

- Looking ahead to the fall, the Affordable Housing Tax Credit Coalition announced last week that its Fall Meeting will take place September 14th – 15th in Washington, D.C.

Market Analysts Meeting

- Also in the fall, the National Council of Affordable Housing Market Analysts, a council within NH&RA, has released the agenda and opened registration for its 2010 Affordable Housing Underwriting Conference & Annual Meeting.
- The conference will be held on October 5th-6th in Chicago.
- The Novogradac valuation group is active with NACAMA. My valuation partners Brad Weinberg and Blair Kincer are scheduled to be there.

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TAX CREDIT TIDBITS

First, the **Massachusetts Historic Rehabilitation Tax Credit Program** has been extended

- On June 30th, Massachusetts Gov. Deval Patrick signed the state's fiscal year 2011 budget bill, which includes an extension of the Massachusetts Historic Rehabilitation Tax Credit program until December 31st, 2017.
 - The program was set to expire at the end of 2011.
 - This program provides tax credits for as much as 20 percent of the cost of certified rehabilitation expenditures for income-producing properties.
 - The program provides as much as \$50 million annually for certified rehabilitation projects.
- Copies of the budget bill and the governor's remarks are available on the Novogradac Historic Tax Credit Resource Center web site, www.historictaxcredits.com.
- You can also contact my partner Charlie Rhuda, in our Boston office for more details about the Massachusetts state historic tax credit.

HUD recently released **2009 American Housing Survey** data

- In the data, HUD notes that there are just over 130 million residential housing units in the U.S. and 86 percent of these are occupied
- Some of the other key findings of the 2009 survey include:
 - 68 percent of U.S. homes are owner-occupied;
 - 51 percent are located in suburban areas;
 - 29 percent in central cities; and
 - 20 percent outside metropolitan areas;
- The median age of a home is 36 years.
- Data from the 2009 American Housing Survey can be found online at www.huduser.org.

In company news, the **purchase of CWCapital** by Fortress was announced.

- Founded in 1972, CWCapital manages, invests in, originates, and advises on commercial and multifamily real estate debt products.
 - As of April 30th, 2010, CWCapital was the investment manager, servicer or special servicer for a portfolio of \$183.6 billion of loans and securities.
 - With more than \$160 billion of named special servicing assignments, CWCapital is the second-largest special servicer in the United States and is a significant Fannie Mae, Freddie Mac, and FHA lender servicing over \$11.5 billion of multifamily and commercial loans.
- Fortress will acquire CWCapital from majority shareholder Otéra US Holding Inc.

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- Closing of the transaction is expected during the third quarter subject to regulatory approvals and closing conditions.