

## **Novogradac Report on Tax Credits** **Summary: July 27, 2010**

Michael J. Novogradac, CPA, reviews the congressional calendar, discusses the House Financial Services Committee markup of a housing preservation bill, shares breaking news about the creation of a tax credit review committee in Missouri, describes Moody's methodology for rating debt secured by rental housing, and shares information on the lawsuit filed by California's attorney general against Fannie Mae and Freddie Mac. Finally, he closes with some tax credit tidbits.

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### **CONGRESSIONAL UPDATE**

#### **Tax Extenders**

- On July 20, the Senate approved an extension of unemployment benefits but dropped the affordable housing and community development proposals from in H.R. 4213.
- H.R. 4213 was originally the vehicle for several tax credit provisions including:
  - extending the Low-Income Housing Tax Credit 9 percent exchange program;
  - providing \$1 billion for an initial capitalization for the National Housing Trust Fund; and
  - extending the New Markets Tax Credit program and allowing the NMTC to be taken against alternative minimum tax liability.
- Reports from Washington indicate that Senate leadership is still committed to passing the remaining portion of the extenders bill, but there are significant procedural barriers making that unlikely to happen before the August recess.
- If Congress is unable to pass tax extender legislation before the mid-term elections, then the package would likely be addressed in a lame duck session.
- To stay posted on the status of tax extenders legislation, follow @Novogradac on Twitter.

#### **Small Business Bill**

- On July 21, Senate Finance Committee Chairman Max Baucus released a new draft of the small business bill.
- The bill still contains
  - an extension of bonus depreciation language for one year,
  - the exclusion of gains from the sale of small business stock acquired after the date of enactment and held for more than five years, and
  - language to allow general business credits generated in 2010 by small businesses to be carried back up to five years.
- The way H.R. 5297 is written it is clear that large corporate investors in low-income housing tax credit transactions could not apply the provision for 2010.
- There were considerable efforts to include a five-year carryback for the low-income housing tax credit in the amendment to the Small Business Jobs Act but as of last week Senate leadership stopped allowing further amendments to the bill.
- This means that the LIHTC carryback proposal will likely not be included in H.R. 5297.
- Supporters of the LIHTC carryback proposal report that Senator Bingaman's office continues to search for future tax legislation that might

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be an appropriate vehicle for the provision but viable opportunities in the near term are unlikely.

- The Senate was scheduled to vote on the bill this week; stay tuned for updates online at [www.novoco.com](http://www.novoco.com) and [twitter.com/Novogradac](https://twitter.com/Novogradac).

#### **Energy Legislation**

##### *STORAGE Act*

- Senators Jeff Bingaman, Ron Wyden, Jeanne Shaheen introduced legislation on July 20 to offer tax credits for the creation of renewable energy storage.
- The Storage Technology of Renewable and Green Energy Act of 2010 Act will provide a 30 percent investment tax credit of up to \$1 million to businesses, and a 30 percent tax credit for homeowners, that install energy storage on their own property.

##### *Thermal Energy*

- On July 21, Senators Al Franken and Kit Bond and Congresswoman Betty McCollum introduced the bi-partisan Thermal Renewable Energy and Efficiency Act.
- The Thermal Renewable Energy and Efficiency Act would offer incentives to increase the use of district energy and combined heat and power systems.
- The Thermal Renewable Energy and Efficiency Act would:
  - create a renewable thermal energy production tax credit,
  - expand tax exempt bond funding, and
  - expand and reauthorize the Department of Energy's Energy Sustainability and Efficiency Grants for Institutions Program.

##### *Energy Tax Bill*

- Yesterday Ways and Means Committee Chairman Rep. Sander Levin, D-Mich., released the draft text of the Domestic Manufacturing and Energy Jobs Act of 2010.
- The bill would:
  - expand the Section 48C advanced manufacturing tax credit to provide an investment tax credit for expenditures to re-equip, expand or modify facilities that manufacture and fabricate solar energy property, fuel cell power plants, and advanced energy storage systems and
  - increase the allocation cap for other facilities by \$3 billion.
- It would also extend the Section 1603 direct payment in lieu of production tax credit and investment tax credit program through 2012;
- The bill would create a program to competitively award \$2 billion of investment tax credits to support taxpayer efforts to improve domestic energy efficiency and identify new sources of renewable energy.

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- More information about the bill's provisions, including a summary of the legislative text and the estimated revenue effects, is available at Novogradac & Company LLP's Renewable Energy Tax Credit Resource Center: [www.energytaxcredits.com](http://www.energytaxcredits.com).

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**HOUSE MARK UP OF HOUSING PRESERVATION LEGISLATION**

- The House Financial Services Committee today marked up H.R. 4848.
- H.R. 4848, the Housing Preservation and Tenant Protection Act of 2010, contains a number of provisions regarding the preservation of affordable housing.
- Several provisions have caused concern within the affordable housing community.
- The National Leased Housing Association has identified four key points of concern, two of which are:
  - The federal first right of refusal provision in Section 107 of the bill-This provision requires the owner of an affordable housing property to offer HUD the opportunity to purchase the housing before entering into any agreement to sell their property.
  - The pre-emption of federal laws in Section 108(d) of the bill-This provision would permit states and localities to regulate owners of projects assisted under federal laws with respect to preservation and tenant protection even if the regulations conflict with federal law and policies.
- Regarding the first issue, NLHA says that HUD is not set up to be an owner and manager of properties. The group is also concerned that this provision will undermine owner and investor confidence in their contractual agreements with the federal government and will alienate willing purchasers who would be required to endure an acquisition process which will negatively affect the market value of these properties.
- Regarding the section issue, NLHA notes that the provision raises a number of Constitutional concerns which will certainly be challenged in the courts, but the practical impact is that owners' contracts with HUD would be rendered meaningless as states and localities attempt to negate federal law.
- The other two provisions of concern identified by NLHA are resident enforcement of public housing agency or project owner agreements with HUD, and resident access to building information.
- More information about NLHA's thoughts on the bill can be found online at [www.nlha.org](http://www.nlha.org)

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• **TAX CREDIT COMMISSION CREATED IN MISSOURI**

- On July 22, Gov. Jay Nixon today announced the creation of a Tax Credit Review Commission that will review the state's 61 tax credit programs.
- Gov. Nixon named 25 business, community and legislative leaders to serve on the commission.
- The commission will analyze the efficacy and return on investment for each of the state's tax credit programs and make recommendations for modifications as appropriate.
- Gov. Nixon appointed Steve Stogel and Chuck Gross to co-chair the commission.
- Stogel is the president of DFC Group in St. Louis; Gross is the director of administration for St. Charles County.
- They are joined on the commission by members of the Missouri General Assembly leaders as well as leaders from the development, education, finance and labor communities, including Zack Boyers of U.S. Bancorp Community Development Corporation in St. Louis.
- While the commission does include several prominent tax credit advocates, bankers and builders, the Missouri Coalition for Historic Preservation and Economic Development released a statement following Gov. Nixon's announcement expressing concern that the commission lacks representatives from small town Main Street groups, community development organizations or historic preservation groups.
- The coalition asserts that because Missouri leads the nation in economic development in part due to the historic tax credit, any commission that is looking at this issue should include more members that are familiar with how the historic tax credit works.
- The coalition reports that since 2000, historic tax credits have generated more than \$669 million dollars in revenue for the state and local governments while creating 43,150 new and retained jobs with an average salary of \$42,732.

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**MOODY'S REVIEWS METHODOLOGY FOR DEBT RATINGS  
FOR RENTAL HOUSING TRANSACTIONS**

- On July 16, Moody's Investors Service released a report summarizing its methodology report provides a detailed explanation of how Moody's assigns debt ratings to rental-based housing project finance transactions.
- The main types of financings analyzed under the housing project finance umbrella are:
  - Affordable Multifamily Housing
  - Privatized Military Housing
  - Privatized Student Housing
  - Subsidized Multifamily Housing
- Moody's says the purpose of the report is to provide market participants with deeper insight into the factors that they consider to be most important to their housing project finance ratings.
- The methodology applies to financings of existing properties, properties to be constructed and those undergoing substantial rehabilitation.
- The agency says its ratings reflect an assessment of a combination of qualitative and quantitative factors.
- Moody's says the key credit factors are:
  - Market Position
  - Financial Position and Performance
  - Ownership and Management
  - Legal Framework, Covenants and Debt Structure
  - Construction and Lease-up Risk
- Moody's employs a weighted average credit assessment of these factors to arrive at a narrow rating range.
- A precise rating is then assigned based on a comparison with peers and additional qualitative considerations that may not be captured within the other factors.
- Therefore, some ratings may be positioned outside the rating range suggested by the methodology because of unusual attributes of a particular project financing that are not captured by the approach.
- Unusual attributes include, but are not limited to:
  - debt service reserves,
  - frequent tenant turnover and
  - bonds that are near final maturity.
- The complete report is available from Moody's Investors Service or by sending an e-mail to [CPAs@novoco.com](mailto:CPAs@novoco.com).

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**LAWSUIT FILED OVER GSES' BLOCKING OF CLEAN ENERGY PROGRAM**

- California Attorney General Jerry Brown filed a lawsuit earlier this month against Fannie Mae and Freddie Mac for blocking a California clean energy program that was designed to create jobs and promote energy independence.
- The Property Assessed Clean Energy, or PACE, program is designed to stimulate the economy and promotes energy independence by assisting homeowners and small businesses in securing funding to make their properties more energy efficient.
- Property owners repay the costs of energy improvements through assessments spread out over a decade or more. Under California law, these costs are classified as tax assessments.
- Brown's office reports that almost half the counties in California have developed PACE programs or plan to start one.
- Fannie Mae and Freddie Mac characterized PACE assessments as loans that must be subordinate to their own mortgages.
- The Federal Housing Finance Agency affirmed Fannie and Freddie's decision on July 6.
- FHFA says that certain energy retrofit lending programs present significant safety and soundness concerns that must be addressed by Fannie Mae, Freddie Mac and the Federal Home Loan Banks.
- Specifically, FHFA says that first liens established by PACE loans are unlike routine tax assessments and pose unusual and difficult risk management challenges for lenders, servicers and mortgage securities investors. The agency also says that the size and duration of PACE loans exceed typical local tax programs and do not have the traditional community benefits associated with taxing initiatives.
- As such, on July 6, FHFA urged state and local governments to reconsider these programs and continues to call for a pause in such programs so concerns can be addressed.
- Brown says the GSEs' actions have effectively shut down the program and as a result, clean energy companies have had to lay off workers and the state risks losing more than \$100 million in federal stimulus money.
- In his lawsuit, Brown asks the court to apply California law and require Fannie Mae and Freddie Mac to change their characterization of PACE assessments.
- A copy of the lawsuit and related information can be found online at [ag.ca.gov](http://ag.ca.gov).

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### **TAX CREDIT TIDBITS**

#### **CRA Hearing Update**

- As most listeners will recall, the federal bank and thrift regulatory agencies announced a series of public hearings on modernizing the regulations that implement the Community Reinvestment Act or CRA.
- The first of the four public hearings was held on July 19.
- The agencies specifically sought comments on issues such as geographic coverage, CRA performance tests and community development, among other topics.
- Enterprise Executive Vice President and Chief Operating Officer Terri Ludwig testified at the July 19 hearing.
- Ms. Ludwig's testimony highlighted the importance of adopting a specific "community development test" for CRA compliance, the importance of examiner training, recognition of green building practices and the need to reconsider assessment area determination.
- In addition to this testimony, Enterprise developed a discussion draft on changes to the CRA regulations that can be downloaded from Enterprise's Legislative Information webpage.
- Three additional CRA hearings will be held in August in Atlanta, Chicago and Los Angeles.
- Hearing details are available online at [www.ffiec.gov](http://www.ffiec.gov).

#### **HUD Appropriations**

- On July 20, the House Appropriations Committee marked up and passed its fiscal year 2011 Treasury and HUD appropriations bill.
- According to the committee summary, the bill provides
  - \$1.825 billion for the HOME program
  - \$17.1 billion for Section 8 tenant-based rental assistance renewal
  - \$9.4 billion for the Section 8 project-based rental assistance program
  - \$4.4 billion for the Community Development Block Grant (CDBG) program, and
  - \$200 million for HOPE VI.

#### **National Tax Credit Equity Fund Closes**

- RBC Capital Markets' Tax Credit Equity Group announced last week the closing of the RBC Tax Credit Equity National Fund 12 with total equity of \$107.5 million.
- The six investors in this fund included two new investor partners, one of which is a first-time LIHTC investor and reflects the expanding scope of the LIHTC market.
- This fund invested in the affordable housing tax credit properties located in fifteen states and the District of Columbia.