

Novogradac Report on Tax Credits
Summary: August 10, 2010

Michael J. Novogradac, CPA, shares an update on the small business bill; discusses the 30 percent requirement for Section 1602 grantees; talks about states' review of their affordable housing plans; examines the latest QEI report for the NMTC program; describes changes to Oregon's state energy tax credit; reviews an update in the Virginia Historic Tax Credit Fund case; and closes with tax credit tidbits.

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CONGRESSIONAL UPDATE

Tax Cuts, Small Business Bill, Tax Extenders

- The Senate left for its August state work period last week and will return September 14th.
- Majority Leader Harry Reid has indicated that when the Senate reconvenes in September, the extension of the Bush era tax cuts for the middle class will be at the top of the agenda.
- It's possible that legislation could be a vehicle for one or more of the tax extenders provisions that stalled during summer, but it's unclear at this time how likely that is.
- The Senate is also expected to resume consideration of the small business tax bill that stalled.
- On August 5th, Majority Leader Reid told reporters that Senate Democrats had been able to gather the votes needed to pass the small business tax package and that the bill would return to the Senate floor next month.
- Meanwhile, before adjourning last week, the Senate passed H.R. 1586, a \$26.1 billion fiscal aid package providing increased Medicaid and education funding to states.
- House Speaker Nancy Pelosi called the House back from its August recess for an emergency session to vote on final passage for the measure; that vote is expected to take place today, August 10th.
- The A.C.T.I.O.N campaign reported last week that it is possible that House passage of the bill could have an impact on the fate of the LIHTC consensus proposals that are currently included in the tax extenders bill because some of the tax revenue raisers that were used to offset part of the cost of H.R. 1586 were originally proposed to offset part of the cost of the extenders bill.
- In light of that lost source of revenue, the A.C.T.I.O.N campaign predicts the extenders bill could become more difficult to pass as it is no longer completely paid for.
- We will continue to monitor the situation; for updates on the latest news from Congress, follow my tweets at twitter.com/Novogradac.

FHA Shutdown Averted

- Last week, the Senate passed by unanimous consent H.R. 5872, the General and Special Risk Insurance Funds Availability Act of 2010.
- The House had passed H.R. 5872 on July 28.
- The legislation increases the Federal Housing Administration's (FHA's) fiscal year 2010 multifamily loan guarantee commitment authority from \$15 billion to \$20 billion.
- This authority supports the construction, rehabilitation, acquisition and recapitalization needs of multifamily rental homes, hospitals and nursing homes.

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- Without the increase, FHA had predicted that its multifamily lending authority would have run out, forcing the program to stop issuing commitments until the next fiscal year starts October 1.
- FHA Commissioner David Stevens issued a memo last week outlining the situation and emphasizing the fact that the commitment authority in question is not a taxpayer subsidy.
- In fact, he estimates that the additional \$5 billion in commitment authority will generate an estimated \$94 million in insurance receipts that can help offset the nation's budget deficit.

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LOW-INCOME HOUSING TAX CREDIT NEWS

30 Percent Requirement for Section 1602 Grantees

- Recipients of funds awarded under the Recovery Act Section 1602 low-income housing tax credit exchange program are reminded that if they that have not expended 100 percent of their Section 1602 funds by December 31, 2010, they are required to demonstrate that they have paid or incurred at least 30 percent of the project's total adjusted basis in land and depreciable property that is reasonably expected to be part of the low-income housing project by December 31.
- This is referred to as the 30 percent test.
- If a project does not meet this 30 percent test as of December 31, all Section 1602 funds that have not been drawn down by that date to pay for eligible costs incurred will be forfeited by the owner.
- In preparation for this process, the California Tax Credit Allocation Committee (TCAC) announced last week it will provide forms for the 30 percent test to be utilized by owners of projects that have received Section 1602 funds.
- If you have questions about the 30 percent test, contact Novogradac & Company at (415) 356-8000.
 - If you don't currently have a Novogradac representative you can all Chris Key at (678) 867-2333.
 - You can locate a Novogradac & Company office near you online at novoco.com. Simply go to the Company menu and click on the button that says Firm Locations.
 - I also invite you to join us at the 17th Annual Affordable Housing Tax Credit Conference, Sep. 30-Oct. 1, in San Francisco, Calif. to discuss the Recovery Act and other LIHTC hot topics.
 - We are excited to have Carol Galante, Deputy Assistant Secretary of the Multifamily Housing Office of U.S. Department of Housing and Urban Development, scheduled as the event's keynote speaker.
 - You can register online at www.novoco.com/events or by calling (415) 356-7970.

States Adjusting to Economic Changes

- State budgets have suffered significantly during the economic downturn.
- In fact, in June, TIME magazine reported that 31 states are projecting a 2011 shortfall of 10 percent or more as a percentage of this year's budget.
- As a result, some state housing agencies are reviewing their long term strategic plans to reflect changes in financial conditions.
 - The Louisiana Housing Finance Agency is currently revising its strategic investment plan to address several unanticipated challenges to Louisiana's affordable housing production and preservation.

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- Those challenges include
 - hurricanes Gustav and Ike,
 - statewide fiscal pressures,
 - the global financial crisis,
 - credit rating downgrades,
 - reductions in tax credit equity,
 - the creation of numerous federal recovery programs and
 - the gulf oil spill.
- The agency's director, Milton Bailey, issued a memo last week with almost 50 possible priorities for the agency.
- Some of the items that LHFA is considering are:
 - Requiring new and rehabilitated workforce housing to incorporate the highest level of energy efficiency as is financially feasible
 - Depositing into the state Housing Trust fund a portion of the fees generated from low-income housing tax credit and multifamily revenue bond application, and
 - using Neighborhood Stabilization Program funds to convert surplus schools and blighted state and locally owned properties into rental housing
- Additionally, LHFA is considering directing its energies to supporting several federal affordable housing development initiatives, including:
 - the extension of the 1602 exchange program and its expansion to include Gulf Opportunity Zone and 4 percent LIHTCs;
 - the extension of the 10 percent LIHTC cap increase provided by the Housing and Economic Recovery Act;
 - the creation of a five-year LIHTC carry-back; and,
 - the funding of the National Housing Trust Fund.
- Listeners are encouraged to participate in these revisions and in similar opportunities to comment on state's qualified allocation plans (QAPs).
 - A copy of Bailey's August 3 memo and Louisiana's current strategic plan can be found online at www.taxcredithousing.com by clicking on "QAPs and Applications" in the LIHTC menu. QAPs and related materials are also posted there for each state.

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NEW MARKETS TAX CREDIT NEWS

Big Jump in QEI Issuance in July

- On August 3rd, the CDFI Fund released the update to its ongoing Qualified Equity Investment (QEI) Issuance Report.
- The report identifies, among other things:
 - each entity that has received allocations of new markets tax credit;
 - the total allocation amount received by each entity;
 - the dollar amount of allocation authority that has been issued to investors;
 - the amount remaining to be issued to investors; and
 - the predominant markets to be served by each entity.

Key figures

- In July, more than \$1 billion of QEIs were finalized, which was welcome news for qualified businesses that benefit from the investments made by CDEs.
- This is the biggest jump in QEI issuance on record for a single month, according to Novogradac & Company analysis of the data provided by the CDFI Fund.
- The spike last month can be attributed to a QEI issuance requirement for applicants in the 8th allocation application round.
- In short, organizations that applied for the next round of new markets tax credits allocation and that have previously received an NMTC allocation award must have met a QEI threshold by July 21 in order to be eligible to for an additional allocation.
- As of the August 3rd report, there was more than \$7.4 billion in NMTC allocation authority remaining to be committed and/or finalized.
- This amounts to roughly a 10 to 18 month supply of NMTC authority
- A copy of the August report and a graph illustrating the amount of QEIs issued and the amount of authority remaining can be found online at www.newmarketscredits.com.
- Questions about this report or the QEI threshold can be directed Owen Gray in Novogradac & Company's San Francisco office at (415) 356-8000.
- To discuss the current NMTC application round, join Novogradac & Company at the New Markets Tax Credit Investors Conference on October 20-21, 2010 in Chicago, Ill.
- Details are available online at www.novoco.com/events.

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RENEWABLE ENERGY TAX CREDIT NEWS

Oregon Amends BETC Program Again

- As mentioned earlier in the podcast, most states are struggling to cope with significant budget gaps in the wake of the recession.
- As a result, scrutiny of state tax credits has increased as legislatures scour their budgets in search of savings.
 - For example, as I reported earlier this year, lawmakers in Hawaii and New York have considered proposals to delay or otherwise curtail investors' ability to claim state tax credits.
 - The proposal in Hawaii was approved and the issue is still under consideration in New York.
- Another state that has moved to pare down the cost of state tax credits is Oregon, where the Oregon Business Energy Tax Credit (BETC or "Betsy") has been amended repeatedly to reign in the cost of the program.
- The amendments were made in November 2009, January 2010, and May 2010 in order to reduce the program's impact on the general fund, according to prior summaries by the department.
- The most recent set of rules took effect May 27 and expire November 2.
- They include the following provisions:
 - a monetary cap for renewable energy projects,
 - a requirement that employee transportation energy conservation facilities remain in operation for one year;
 - conditions under which renewable energy resource facilities and renewable energy resource equipment manufacturing facilities will be considered a single facility;
 - a requirement of evidence that a facility will be maintained and operated for at least five years after the facility is placed in operation unless the precertification provided for a lesser period of time;
 - a condition that an applicant will not be considered to have started erection, construction, installation, or acquisition of a proposed renewable energy facility until excavation or actual physical construction begins; and
 - the definition of a renewable energy storage device.
- These rules will affect developers of and investors in renewable energy in Oregon, who are encouraged to review the changes closely to determine which rules apply to their projects and transactions.
- Looking ahead, as adverse economic conditions continue to put pressure on the state's budget, it's very likely that lawmakers will continue to scrutinize every program that impacts the general fund, including the BETC program, which do reduce the amount of tax revenue received by the state.

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- Reports indicate that when the legislature convenes in 2011, one of the many issues that it will consider is whether to let the BETC program expire in 2012 as scheduled.
- For questions about the BETC program, or how these amended rules may affect your renewable energy transaction, please call Nicolo Pinoli in Novogradac & Company's Portland office at (503) 241-6499.

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HISTORIC TAX CREDIT NEWS

Amicus Brief filed by Virginia in Support of the Fund

- To follow up on a topic from last week, we've posted a new document online in the IRS's appeal of the Tax Court's ruling in the Virginia Historic Tax Credit Fund case.
- In case you missed it, a summary of the IRS's appeal and position can be downloaded in the August 3rd podcast. All archived podcasts are available in iTunes and online at www.novoco.com/podcast.
- The commonwealth of Virginia filed an amicus brief in support of the Virginia Historic Tax Credit Fund outlining why the state thought that the Tax Court's ruling should be upheld.
- In the brief, the commonwealth states quote: "Far from a sinister, aggressive manipulation of the tax code, Virginia specifically contemplated that parties would make arrangements of the sort at issue."
- In its brief the state writes that the economic gain offered to investors through the state tax incentive program does not undermine the validity of the partnerships. The state argues that to hold otherwise would be to diminish the effectiveness of tax programs established to accomplish beneficial ends.
- The state argues that no adverse inference should be drawn from the fact that the partnerships in the case were designed to take advantage of tax credits because those tax credits were in fact enacted to foster a beneficial purpose and as such harnessing them does not render a partnership suspect.
- A copy of the commonwealth's amicus brief and other documents related to the case can be found online at www.historictaxcredits.com.
- Questions about the case, or about historic tax credits in general, can be directed to Tom Boccia in Novogradac & Company's Cleveland office at (216) 298-9000 or Thomas.boccia@novoco.com.

Developments of Distinction Awards Expanded to Include Historic Properties

- Nominations are now being accepted for the Novogradac Journal of Tax Credits 2nd Annual Developments of Distinction Awards.
- Established to recognize excellence and honor outstanding achievement in the development tax credit projects, the Developments of Distinction Awards have been expanded this year to include a new category for historic tax credit developments.
In addition to awards for LIHTC and HUD financed properties, an award will be presented to the most meaningful and distinctive Historic Tax Credit project that has served as a major catalyst for further community development in the surrounding area.
- Historic tax credit professionals are encouraged to nominate their projects or another's for the Developments of Distinction Awards.

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- The deadline for nominations is September 15.
- For more information, including a link to the nomination form, go to www.historictaxcredits.com and click on the banner ad for the 2010 Developments of Distinction Awards.
- Questions can also be directed to Jane Zastrow at (415) 356-8000.

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TAX CREDIT TIDBITS

Tax-Exempt Bond Data added to Rent & Income Limit Calculator ©

- Novogradac & Company has updated its Rent & Income Limit Calculator © to now include rent and income limit data for tax-exempt bond financed properties.
- We've also posted a demo of how to use this complimentary online tool on our YouTube channel. To see the video, simply go to www.YouTube.com and search for Novogradac or go directly to www.YouTube.com/NovogradacCPAs.
- Questions about the Rent & Income Limit Calculator can be directed to Thomas Stagg and questions about Novogradac & Company property compliance services can be directed to my partner Jim Kroger. Both Thomas and Jim are in our San Francisco office at (415) 356-8000.

HUD Proposes FMRs for 2011 Housing Choice Voucher program

- Last week the U.S. Department of Housing and Urban Development (HUD) released proposed fair market rents (FMRs) for the Housing Choice Voucher program and the Moderate Rehabilitation Single Room Occupancy program for fiscal year (FY) 2011.
- HUD will accept public comment on the proposed FMRs, including comments about FMR levels for specific areas, until September 4, 2010.
- The August 4th *Federal Register* notice includes information about HUD's procedures and methodology for the development of the FMRs as well as a list of the proposed FMRs.
- The notice can be found online at www.hudresourcecenter.com.
- Questions about your HUD financed property can be directed to Susan Wilson in Novogradac & Company's Austin office at (512) 340-0420.