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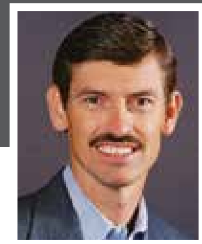

Top 10 Stories of 2015 to Date

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Congress returns to session this month to face a full slate of pressing issues including a Sept. 30 deadline to pass funding legislation to avoid a government shutdown. As year-end deadlines start to pile up and before we look ahead to plan for 2016, it's an ideal time to consider the major developments of the year so far. Of the top 10 stories described here, some have been ongoing issues that are following somewhat predictable paths. Others, while expected and foreseen, have included some surprising twists.

Tax Reform Continues to Dominate Tax-Writing Committee's Focus

While comprehensive, or even significant, tax reform is no longer projected until after the 2016 presidential election, the focus on reform has continued to be a central focus of the tax writing committees in Congress.

The Senate Finance Committee in January formed five working groups to examine options for reforming the U.S. tax code. The five groups were: community development and infrastructure, business income tax, individual income tax, international tax and savings and investment. Each working group has been discussing the pros and cons of the current code, considering tax reform scoring issues, and examining interaction between code sections and how they would be affected by tax reform.

Public comment was accepted through April 15. The Novogradac LIHTC Working Group, Novogradac NMTC Working Group Novogradac RETC Working Group and submitted comments, which can be found online at www.lihtcworkinggroup.com www.nmtcworkinggroup.com, and www.renewableenergyworkinggroup.com, respectively.

The community development and infrastructure group is the one that evaluated the low-income housing tax credit (LIHTC), new markets tax credit (NMTC), historic tax credit (HTC) and also included renewable energy tax credits (RETC). The group was co-chaired by Sen. Dean Heller, R- Nev., and Michael Bennet, D- Colo., and issued its report July 8. The report did not outline any specific recommendations regarding the tax credits. Instead, it provided a general description of the tax credit programs and it estimated the tax expenditures of each for fiscal years 2014 to 2018.

Although the working groups did not advance tax reform, and indeed the lack of bipartisan recommendations in the committee's reports indicate that tax reform is difficult to achieve, most tax policy insider expect that the ground work for the working group deliberations will be used in future tax reform efforts expected in 2017. Also, the working groups have submitted reform proposals to the Joint Committee on Taxation for cost estimates, which are

continued on page 2

continued from page 1

expected to be completed soon and will be important in advancing tax reform.

Tax Extenders Legislation Progresses

Meanwhile, after hearing the criticism from last year's last-minute approval, House and Senate leaders have said they want to tackle tax extenders sooner rather than later. As noted in this space last month, the Senate Finance Committee in July approved legislation that included a 2015 and 2016 extension of 52 tax provisions that expired at the end of 2014 that are commonly referred to as tax extenders. The strong bipartisan vote of 23-3 was expected to help advance the bill in the full Senate. The full Senate is expected to consider the committee-approved extenders bill in early September.

In the House, Ways and Means Committee Chairman Paul Ryan, R-Wis., has said he wants to deal with tax extenders in the fall rather than the winter. Ryan has expressed his preference to make a select group of extenders permanent, rather than mirror the Senate Finance Committee's approach of extending most expired provisions for two years through the end of 2016.

Some tax policy insiders believe it is possible that a deal could be struck this fall that makes some extenders permanent and provides a two-year extension for most of the rest, similar to a deal negotiated last year by former House Ways and Means Committee Chairman Dave Camp, R-Mich., and former Senate Majority Leader Harry Reid, D-Nev. That deal was unraveled by White House opposition. But if administration priorities such as making the earned income and child tax credit enhancements permanent were included, the chances for a deal would increase.

However, if the House and Senate can't compromise quickly on a final extenders bill, the tax credit community will likely have to endure another late rush to pass an extenders package before the end of the year, and that package may only be a one-year retroactive bill, extending expiring provisions only through the end of 2015.

Supreme Court Issues 'Disparate Impact' Ruling

The U.S. Supreme Court issued its decision in the case Inclusive Community Properties Inc. vs. Texas Department of Community Affairs June 25. The 5-4 decision allows complaints to be made under the Fair Housing Act based on "disparate impact," which is when a policy that appears to be neutral has a discriminatory effect on a protected class. The case and its implications are complex, but significant. Detailed analysis is provided in the article on page 14.

HUD Issues Final Rule on Affirmatively Furthering Fair Housing

Another major fair housing development followed quickly when the U.S. Department of Housing and Urban Development (HUD) July 8 announced and on July 16 published a final rule on affirmatively furthering fair housing. The final rule clarifies existing fair housing obligations for HUD funding recipients—state and local governments as well as public housing agencies—to incorporate into their planning processes. HUD said it will provide open data to funding recipients and the public on patterns of integration and segregation, racially and ethnically concentrated areas of poverty, disproportionate housing needs and disparities in access to opportunity.

CDFI Fund Awards $3.5 Billion in NMTC Allocation Authority

The U.S. Department of the Treasury's Community Development Financial Institutions (CDFI) Fund announced June 15 the 76 community development entities (CDEs) selected to receive $3.5 billion in new markets tax credit (NMTC) allocation authority under the calendar year 2014 round of the NMTC program. The 76 CDEs receiving awards in the 12th allocation round were selected from a pool of 263 applicants that requested more than $19.9 billion in allocation authority. The 2014 allocatees are headquartered in 27 states and the District of Columbia, and have identified principal service areas that will cover nearly every state in the country and the District of Columbia, including many historically underserved states.

Despite demonstrated success, the NMTC's future remains uncertain. Community development professionals lament the lack of long-term certainty and report that it constrains the economic development potential of the program, keeping costs high and making it more difficult to serve low-income communities. Program permanency would also allow more multiphase, longer-term projects to benefit from the NMTC.

continued on page 3

continued from page 2

In anticipation of Congress renewing the NMTC, the CDFI Fund has begun working on its 2015 funding round application and notice of allocation availability (NOAA).

GAO Suggests IRS, HUD Jointly Administer LIHTC Program

In a report issued July 24, the U.S. Government Accountability Office (GAO) suggested Congress should consider designating HUD as a joint administrator with the IRS of the LIHTC program. The GAO recommends HUD be given responsibility for regular monitoring of housing finance agencies and analyzing the effectiveness of the program.

Conducted at the request of Senate Judiciary Committee Chairman Charles Grassley, R-Iowa, the report cites "minimal" oversight by the IRS of the LIHTC and points out that the IRS already shares joint administration duties with other agencies both the NMTC program and the historic tax credit (HTC) program. Details are available in the July 24 post on the Notes from Novogradac blog.

Tax Credit Legislation Introduced

A number of bills have been introduced this year to amend the low-income housing tax credit and the new markets tax credit.

Reps. Pat Tiberi, R-Ohio, and Richard Neal, D-Mass., in February introduced H.R. 1142, a bill that would create a permanent floor for the LIHTC. The bill would establish a fixed 9 percent LIHTC rate for new rental construction property and a fixed 4 percent LIHTC rate for existing property. The bill would apply to buildings placed in service after Dec. 31, 2014. At the time of this writing, H.R. 1142 has 35 Republican and 31 Democratic cosponsors. Sens. Maria Cantwell, D-Wash., and Pat Roberts, R-Kan., in May introduced companion legislation in the Senate: the Improving the Low-Income Housing Tax Credit Rate Act (S. 1193). As this column went to print, S. 1193 has 24 Democratic, four Republican and two Independent cosponsors.

Also in February, Rep. Keith Ellison, D-Minn., reintroduced a bill to expand funding for the National Housing Trust Fund and the LIHTC. The Common Sense Housing Investment Act of 2015 (H.R. 1662) would increase the per-capita allocation from $2.30 to $2.70. The legislation would also provide a 50 percent eligible basis boost for rental housing targeted to extremely low-income households. The amendments would be effective for LIHTC allocations made in calendar year 2015 or later. H.R. 1662 would also expand Section 8 rental assistance and the public housing capital fund.

In May, Sens. Al Franken, D-Minn., and Rob Portman, R-Ohio, introduced S. 1412, a bill that would extend eligibility to live in LIHTC units to homeless or previously homeless full-time students who would otherwise qualify to live in LIHTC units. The Housing for Homeless Students Act of 2015 would exempt individuals from the student rule if they were homeless children or youth within seven years of moving into the LIHTC unit. The bill would also exempt veterans from the student rule if they are or have been homeless within five years of moving in to the LIHTC unit. Sens. Franken and Portman introduced similar legislation last year, and Rep. Jim McDermott, D-Wash., is expected to introduce the House companion bill, which was previously cosponsored by Reps. Tiberi and Erik Paulsen, R-Minn.

Bipartisan legislation was introduced in July in the House and Senate to provide tax relief to communities affected by natural disasters from 2012 to 2015, in the form of increased availability of LIHTCs, NMTCs and HTCs. The National Disaster Tax Relief Act (S. 1795 and H.R. 3110) would provide an increased LIHTC allocation in qualifying disaster areas equal to $8 per person or 50 percent of a state's annual LIHTC ceiling, whichever is higher. In addition, CDEs serving disaster areas would be eligible to compete for an additional $500 million NMTC allocation for each year from 2012 through 2015. Finally, HTC-eligible properties could receive a 26 percent HTC in disaster areas, rather than 20 percent, and properties eligible for the non-historic rehabilitation tax credit could receive 13 percent, rather than 10 percent.

In February, Reps. Tiberi, Richard Neal, D- Mass., and Tom Reed, R-N.Y., introduced H.R. 855, the New Markets Tax Credit Extension Act of 2015 to permanently extend the NMTC. The legislation would also provide an annual inflation adjustment and allow the NMTC to be taken against alternative minimum tax liability. If the bill is enacted in 2015, Novogradac & Company LLP estimates that about $4.8 billion in allocation authority would be

continued on page 4

continued from page 3

available. H.R. 855 has 35 Democratic and 22 Republican cosponsors. Sens. Roy Blunt, R-Mo., and Charles Schumer, D-N.Y., introduced companion legislation in the Senate February 26.

Legislation to improve and expand the HTC hasn't been introduced at the time of this writing, but is expected shortly. Details can be found on page 69.

Budget Proposal Features Several Tax Credit Provisions

President Barack Obama released his fiscal year 2016 (FY 2016) budget proposal Feb. 2, which included some significant changes from past budgets. For the LIHTC, the budget proposed allowing states to increase their LIHTC authority by converting up to 18 percent of their private activity bonds (PAB) volume cap into LIHTC allocations—which, if states decided to convert the maximum amount, could result in a 50 percent increase in LIHTC allocations, revising the formulas used to produce monthly allocated credit percentages, allowing LIHTC income limits to be based on an average of 60 percent of area median gross income and removing the qualified census tract (QCT) basis boost population cap. The administration also again proposed to make the NMTC program permanent at a $5 billion annual level. The proposal included allowing NMTC amounts from QEIs made starting this year to offset taxpayers' alternative minimum tax (AMT) liability.

THUD Spending Bills Stall

Appropriations, like tax extenders, has been following a familiar pattern established in recent years. Even though most spending bills have passed the House and Senate Appropriations committees, further progress is unlikely. On June 25, the Senate Appropriations Committee approved its $55.7 billion fiscal year FY 2016 Transportation-HUD (THUD) spending bill, on a vote of 20-10. The amount is about $1.9 billion more than the fiscal year (FY) 2015 enacted level, but $7 billion less than the FY 2016 request. It is unclear if or when the full Senate will consider the FY 2016 THUD bill. The full House has also passed a relatively similar FY 2016 THUD spending bill.

Sequestration is a key sticking point; the administration and congressional Democrats have called on Republican leaders to reverse sequestration and increase discretionary spending over the budget caps, offset by mandatory spending cuts and/or revenue increases. Absent a deal to increase budget caps, it appears very likely that the Congress will consider a continuing resolution to funding the government at FY 2015 levels after the fiscal year ends Sept. 30.

Final FY 2016 spending bills could also be combined with legislation to increase the federal debt ceiling, which the federal government is projected to meet sometime in November or December. Prior to the August state and district work period, Senate Majority Leader Mitch McConnell, R-Ky., pledged to avoid a government shutdown or failing to raise the national debt ceiling.

Senate THUD Bill Slashes HOME Funding

As passed, the Senate Appropriations Committee's THUD bill decimates the HOME Investment Partnerships Program by cutting funding from $900 million in FY 2015 to just $66 million, an $834 million (93 percent) cut. The defunding has sparked immediate resistance from the affordable housing community. Because HOME funding is allocated to approximately 650 participating jurisdictions, such a cut would render the program essentially unworkable. THUD Subcommittee Ranking Member Jack Reed, D-R.I., introduced an amendment that would have increased the bill's funding levels for HOME and other programs but that amendment failed by a vote of 14 to 16.

Conclusion

As you can see, this year has been a busy one for the affordable housing and community development sectors. And while there are a handful of predictions that can be made with some level of comfort, the one thing that's most certain is that we can never completely know what to expect.

This article first appeared in the September 2015 issue of the Novogradac Journal of Tax Credits.

continued on page 5

continued from page 4

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