In this week’s Tax Credit Tuesday Podcast, Michael J. Novogradac, CPA, starts off with a brief summary of some of how federal agencies are working to minimize the effects of the government shutdown on affordable housing, community development and historic preservation incentives. He then shares an update on a possible legislative vehicle for extending many expired tax provisions, known as tax extenders. He follows with news on housing finance reform. He closes with news about updated national median income estimates and a request to the IRS to clarify a certain use of multifamily private activity bonds.

Summaries of each topic:

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GENERAL NEWS

Starting with the Government

- It has now been 11 days since the end of the partial federal government shutdown, and things are ramping back up.
- This, amidst the threat of another shutdown in a mere 10 days.
- Now another shutdown looms because the continuing resolution agreement that ended the shutdown will expire Feb. 15.
  - That’s a week from this Friday, a mere 10 days from now.
- Now as we discussed last week, the partial shutdown had a dramatic effect on affordable housing, community development and historic preservation.
- Perhaps the area most affected was the department of housing and urban development, or HUD, where the renewals of housing contracts were put on hold during the 35-day shutdown.
- Only 325 HUD staff out of more than 7,000 HUD employees reported for work during the shutdown.
- As we’ve reported, more than 1,000 HUD housing contracts expired during the shutdown.
- Well, HUD is now up and running.
- HUD is renewing Section 8 project-based rental contracts, with an emphasis, as you’d expect, on contracts that weren’t renewed during the shutdown.
  - Now HUD is apparently starting with those that expired in December and working forward from there.
- HUD does hope to renew hundreds of contracts before February 15.
  - That’s the date when the current continuing resolution expires, as I noted earlier.
- Now regarding the Section 202 HUD program for low-income seniors, LeadingAge is reporting that there is no guarantee that those contracts will be renewed before the current continuing resolution expires.
- LeadingAge, is an advocacy group for housing and health care for seniors, if you aren’t aware.
- Now HUD obviously wasn’t the only area of government affected by the shutdown.
- As we reported last week, the announcement of the 2018 new markets tax credit (NMTC) allocations was delayed by the shutdown.
  - That’s because the CDFI Fund oversees the program and its NMTC program staff were furloughed during the shutdown.
- Last week the new director of the CDFI Fund said that the organization is assessing the impact of the shutdown and does expect to provide updates and information soon.
  - Jodie Harris was supposed to become the CDFI Fund director in January, replacing outgoing director Annie Donovan.
  - But Director Harris’s first day was during the shutdown.
  - So she officially began service Jan. 28.
- Harris’ announcement did say that the CDFI Fund staff is working to minimize the effects of the shutdown.
- Now on the NMTC allocations front, they were scheduled to be released sometime this winter, but the shutdown likely pushed the award announcement to late March or early April.
- Now the 2018 Capital Magnet Fund announcements were also delayed.
We’ll share more information about those delays in a future podcast.
Now looking at the federal Historic Tax Credit (HTC) program.
It was affected by the shutdown as well.
The National Park Service administers the federal HTC.
And according to discussions that the Historic Tax Credit Coalition had with Brian Goeken of the National Park Service, the entire team that processes those applications was furloughed for the entire shutdown.
  o That’s the processing of Part 1, Part 2 and Part 3.
  o Now this obviously created a substantial backlog of applications at the National Park Service.
  o The National Park Service itself asked state historic preservation offices to hold onto submissions during the shutdown so files wouldn’t be misplaced while in transit.
  o Now those materials are now being received in Washington.
  o And for example, in just a single day last week, several dozen boxes were delivered.
  o And that’s just one-third of the expected backlog.
I do want to give a shout out, or a hat tip to Merrill Hoopengardner of the National Trust Community Investment Corporation for sharing these National Park Service insights with us.
The National Park Service expects to work through the backlog in the order the files were received, by the way.
The National Park Service has also created a portal to check on the status of your submission.
  o That portal is updated daily and I’ve included the link to that portal in today’s show notes and on my Twitter feed.
Yet another casualty of the partial shutdown was the schedule, the timing, for the federal budget.
The budget was supposed to be submitted to Congress yesterday.
However, the administration won’t release President Trump’s budget request this week, this according to reporting by Politico and others.
  o The president makes the annual State of the Union speech tonight, but the associated budget request will wait.
    ▪ By the way, I will live tweet tax aspects of the state of the union speech.
    ▪ I certainly do expect opportunity zones to make a cameo.
  o Turning to the Office of Management and Budget, it is working on the revised schedule for releasing the budget.
  o This revised schedule for releasing the budget is taking into account for the fact that most of the federal employees who prepare the budget request were furloughed.
Now Reuters reported last week that the White House is going to call for at least a 5 percent cut in domestic spending.
  o That would be across the board.
  o Of course, the administration has proposed similar cuts in the past two years, and Congress, as you know, went a different direction.
Now while the president will be late with his budget, Democrats in the House of Representatives say they plan to complete their budget on time.
What is that?
Well Congress is supposed to complete work on a budget resolution by no later than April 15.
Congress does though regularly miss that deadline.
And even assuming the House does complete its work on a budget, that budget’s chances of passing in the Republican-controlled Senate is virtually zero.
   Actually, it’s probably not virtually zero, it’s probably just zero.
Nevertheless, work on the budget will set the stage for the annual appropriations process for fiscal year 2020.
This will undoubtedly result in months of negotiations.
All of that said, there was some good news for community development after the federal government reopened.
One of the first announcements by the IRS was that it set a date for a hearing on the proposed opportunity zones regulations that were released in October.
That hearing will be Feb. 14, which is a week from this Thursday.
And conveniently, it’s one day before Feb. 15, the next possible government shutdown date.
The hearing will be at the IRS building in Washington, D.C.
The opportunity zones regulations that were released in October were merely the first tranche of guidance.
   This hearing concerns that first tranche of guidance.
   But more guidance is expected soon, a second tranche, likely in the next few weeks.
   More specifically, there’s a good chance we’re going to hear soon that the guidance has been submitted to the Office of Information and Regulatory Affairs within the Office of Management and Budget.
   It will then take 10-45 days – bit of a span – before the Office of Management and Budget would return the regulations to Treasury.
      Probably in the middle of that range. But hard to tell.
   Treasury would then publish the guidance 24-48 hours after release by the Office of Information and Regulatory Affairs.
In fact, as we said last week, a group of seven senators and nine members of the House of Representatives have sent a letter to the IRS seeking guidance and giving suggestions about IRS guidance.
We shared a breaking news email on the five key points that they included in their letter.
In case you missed that breaking news email, I’ll tweet out a link to the news item.

Extenders, Technical Corrections
Let’s talk now about tax extenders.
   It’s a topic of interest to many of our listeners.
Senator Chuck Grassley of Iowa, chairman of the Senate Finance Committee, said the best way to pass tax extenders is this month’s legislation to fund the Department of Homeland Security, IRS and other agencies.
   Essentially, avoiding another government shutdown and attaching tax extenders to the legislation that does that.
Now Chairman Grassley specifically cited some incentives that expired at the end of 2017, saying that those provisions, getting those provisions extended is his top priority.
One of the provisions that did expire in 2017 was the Section 45L credit.
That’s a $2,000 credit per unit for energy-efficient homes, and it’s a credit that a lot of our affordable rental housing developments are eligible for.

- Now the deadline for the funding bill is Feb. 15 and House Ways and Means Committee Chairman Richard Neal has said his committee’s also considering extenders.
- Now meanwhile, on the technical corrections front, Congressional Democrats said that they could use a technical corrections bill to correct last year’s tax reform legislation, but they would use that to get other incentives passed.
- More specifically, the chief tax counsel for the House Ways and Means Committee told Bloomberg that Democrats are willing to discuss legislation to fix errors in the tax reform legislation.
  - But chief tax counsel Andrew Grossman said that such legislation would involve what he called, and here I quote, “heavy negotiation” end quote, between the parties.
  - Such a technical corrections bill could conceivably be paired with such things as a 4 percent minimum rate for the low-income housing tax credit (LIHTC), a long-term extension for the NMTC, as well as the inclusion of energy storage devices in eligible basis for the investment tax credit (ITC).
  - I know, energy storage device, that’s just a fancy name for a battery.
  - Well we’ll keep you posted in future podcasts and on Twitter regarding the progress of technical corrections legislation and what items might be included as sweeteners for House Democrats.

Housing Finance Reform

- Next, I have some updates on housing finance reform efforts.
- Senate Banking Committee Chairman Mike Crapo of Idaho on Friday of last week released an outline for housing finance reform legislation.
- Chairman Crapo calls for Fannie Mae and Freddie Mac to be taken out of conservatorship and made into mortgage guarantors in the private sector.
  - Now Fannie and Freddie’s multifamily business would be sold and operated independently.
  - The legislation is also predicated on additional guarantors entering the market.
- Crapo’s plans would eliminate as well Fannie and Freddie’s affordable housing goals and duty-to-serve requirements, and instead replace them with a Market Access Fund.
- This Market Access Fund would finance loans, grants and credit enhancements to support affordable homeownership and rental housing.
- In fact, the Housing Trust Fund, the Capital Magnet Fund, as well as this Market Access Fund would be collectively funded through an annual assessment of 10 basis points of the total loan volume that was guaranteed by Fannie, Freddie and the additional guarantors that would form.
- So what would replacing duty-to-serve requirements with a Market Access Fund mean for affordable housing?
- Well this overall proposal and this change is good for the existing Housing Trust Fund and Capital Magnet Fund.
- But it would hurt the three underserved areas that are currently helped by the duty-to-serve mandate.
- These three areas are
  - Rural housing,
  - Affordable housing preservation and
Manufactured housing.

- The duty-to-serve mandate also ensures Fannie and Freddie effectively target certain less desirable market segments, which the affordable housing goals are designed to achieve.

- Now at this time, Crapo’s outline of reform legislation doesn’t appear to give any hint as to how Fannie and Freddie’s LIHTC investments would change, if at all.

- As I said, this is just an outline of proposed legislation.

- Not only is it just an outline, but House Financial Services Committee Chairwoman Maxine Waters of California is most certainly going to have a significantly different version of housing finance reform than Chairman Crapo has.

- Now Crapo and Waters will need to compromise to get a housing finance reform bill to President Trump’s desk.
  - And that is not going to be an easy task.

- Now I mentioned in a previous podcast, Acting Federal Housing Finance Agency or FHFA Director Joseph Otting had reportedly discussed with agency staff plans to take Fannie and Freddie out of conservatorship – doing this without legislation—and that plans would be announced in the coming weeks.
  - This had been reported by Market Watch.

- Well, the White House released a statement last week that walked that back a bit, as, in a statement, the White House pledged to work with Congress on any plans to end conservatorship, as well as housing finance reform in general.

- As an aside, the Senate Banking Committee is expected to hold the nomination hearing next week for President Trump’s nominee for a permanent director of FHFA.

- That being Mark Calabria.
February 5, 2019

OTHER NEWS

- Now in some other news, we at Novogradac & Company have lowered our estimate as to how much the national median income will increase this year.
  - The Congressional Budget Office released its 10-year budget and economic outlook last week.
  - Now the new numbers coming from our team reduced the expected increase in national median income from 5.15 percent to 5.01 percent.
    - Still a pretty substantial increase.
  - Now that matters because the national median income is a factor in determining HUD’s income limits.
  - Our estimate of the change, by the way, in median income for 2020 remains the same.
  - I’ve included a link to our Rent and Income Limit Estimator in today’s show notes, as well as on my Twitter feed.

- And on the affordable rental housing front, the National Association of Bond Lawyers sent a letter to the IRS last week requesting clarification as to whether a preference can be given to veterans in rental housing that’s financed with multifamily private activity bonds.
  - This is a significant issue that has been around for many months now and has slowed, delayed, halted the closing of many transactions.
  - This issue goes like this.
  - A requirement for private activity bonds is that the rental housing that they finance be available to members of the general public.
  - But many states’ qualified allocation plan for LIHTCs give preferences to set-asides for veterans.
  - So the question is whether the veterans’ preference violates the general public use requirement.
  - Now if the IRS doesn’t provide guidance that such a preference is allowable in the context of multifamily housing bonds, then Congress is going to need to step in and provide clarification through legislation.
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