In this week’s Tax Credit Tuesday Podcast, Michael J. Novogradac, CPA, talks about the recently passed Consolidated Appropriations Act of 2018 and its provisions regarding the low-income housing tax credit and HUD funding. After that, he shares highlights of HUD and GAO reports, followed by some state-level news from California and New York.

**Summaries of each topic:**

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FY 2018 Omnibus Spending Bill

- You’ve certainly heard by now that the fiscal year 2018 omnibus spending bill was enacted last week.
- The nearly $1.3 trillion spending bill includes $700 billion for defense and $591 billion for nondefense spending.
- The bill provides full-year appropriations legislation and funding for the 12 annual appropriations bills through Sept. 30 of this year, the end of fiscal year 2018.
- Overall, the bill represents a $60 billion increase in nondefense spending over current funding levels.
- The bill is a whopping 2,232 pages of legislative text and it does include several tax provisions, most notably, to our listeners, an expansion of the 9 percent low-income housing tax credit (LIHTC).

Now I’ll highlight the provisions relating to the LIHTC first.
Then, I’ll go over what the omnibus would do for various HUD programs and their funding levels.

So here’s what we know about the LIHTC provisions:
- The bill would increase 9 percent LIHTC allocations by 12.5 percent starting this year in 2018 and lasting until the year 2021.
  - The new 2018 per-capita amount would be $2.70.
  - And the new small state minimum would be $3,105,000.
- Annual inflation adjustments would also be applied to the new 2018 allocation amounts for 2019 through 2021.
- Now unless the provisions are extended, the annual allocation increase, this 12.5 percent increase, would revert back to current law, adjusted for inflation in the year 2022.

So what does all this mean in terms of affordable housing production?
- In a nutshell: The omnibus was generally good news for affordable housing.
- We estimate that the four-year, 12.5 percent allocation increase will increase affordable rental housing production by 28,400 homes over 10 years as compared to current law.
- In other words, the temporary 12.5 percent increase will get back about 12 percent of the units that were lost through tax reform.
  - Which means barring any additional action, nearly 90 percent of affordable homes lost through tax reform will still be lost.
- On that note, I do want to correct some misinformation or incomplete information is probably a better way to say it, that I’ve seen in the news.
- I’ve seen some articles that mistakenly say that if this temporary 12.5 percent increase in 9 percent credits was made permanent that it would bring back LIHTC production to their pre-tax reform levels.
- Sadly, that’s not the case.
- A permanent 12.5 percent allocation increase would help get back some, but not all, of only the 9 percent volume cap homes.
  - I say only 9 percent volume cap homes because this increase of 12.5 percent in 9 percent credits doesn’t help replace the lost 4 percent private activity bond-financed production, the unit category that suffered the greatest under tax reform.
If you wanted to bring back those units, you’d have to provide a higher credit percentage for tax-exempt bond financed projects.

Now on the 9 percent side, in order to bring production from the 9 percent program back to pre-tax reform levels, you would need a 19 percent increase in LIHTCs.

- So, in summary, a permanent 12.5 percent increase gets us to about two-thirds of the increase needed to return to pre-tax reform levels.

- The bottom line though is that the 12.5 percent increase is a welcome and significant first step, but it’s not enough to bring us back to where we were.

- Not to mention, it’s still far from meeting the vast unmet demand for more affordable rental housing for low-income families.

- I like to call the 12.5 percent increase a down payment for getting back some of the nearly 235,000 units that will be lost through tax reform.

- This so-called down payment is about 10 percent progress towards where we need to be to get back to where we were before tax reform.

- Now the allocation cap increase was the headline provision, but there was another notable provision for the LIHTC.

- So what is this notable provision?

- The omnibus bill includes a provision from the Affordable Housing Credit Improvement Act to create an income-averaging option.

- Now under current federal law, household incomes for LIHTC properties cannot exceed 60 percent of the area median income.
  - Now that’s at move-in, of course.
  - The income-averaging option in the omnibus would allow certain apartments in a LIHTC property to be available to residents earning up to 80 percent of area median income, so long as the average for tax credit units is at or below 60 percent of the area median.
  - That means for 80 percent units, you would then need to have some 40 percent units, some 70 percent units, some 50 percent units.

- Now the income-averaging provision makes developing LIHTC housing more financially feasible in a number of places.
  - Those with high housing costs or rural areas with very low area median incomes.

- However, on the unit production side, income averaging is only be marginally helpful.
  - It’s not going to help produce that many additional units, but it will help serve lower income families.

- Now to address any confusion about these omnibus provisions, I’ve written a Notes from Novogradac blog post called, “Affordable Housing Provisions in Omnibus Bill an Important Down Payment, not a Complete Fix.”

- I’ll post the link in today’s show notes.

- Now, let’s look at what the spending bill means for HUD funding.

- The bill provides HUD nearly $53 billion in gross discretionary spending and nearly $32 billion in net appropriations.

- Compared to fiscal year 2017, the gross spending level is nearly $5 billion or 10 percent more.

- This increase is a tremendous achievement for affordable housing, especially considering the budget challenges that face nondefense and HUD spending.
I won’t go over funding details for every program, but I do want to highlight some key changes.

Compared to the enacted levels for fiscal year 2017, the fiscal year 2018 omnibus would, once again, compared to FY 2017, the 2018 omnibus would:
- Increase HOME funds by 43.4 percent to one billion, three hundred sixty-two million dollars.
  - Once again, HOME funds go up 43.4 percent to one billion three hundred sixty-two million dollars.
- CDBG funding?
  - Well it goes up 7.8 percent to three billion, two-hundred thirty-five million dollars.
- There’s also an increase in Housing Choice Vouchers by 8.5 percent to twenty-two billion, fifteen million dollars.
- It would increase project-based Section 8 by 6.5 percent to eleven billion, five hundred fifteen million dollars.
- And increase the Public Housing Operating Fund by 3.4 percent or four billion, five hundred fifty million dollars.
- And lastly, or not lastly, but the last item I’m going to mention here on the podcast, increase the Public Housing Capital Fund by 41.6 percent to two billion, seven hundred fifty million dollars.

Now we’ve provided analysis of HUD funding levels in a recent Notes from Novogradac blog post.
- And if all those numbers are sounding a little bit jumbled, for your reference, we’ve also created a chart that compares HUD funding levels in the omnibus to the levels enacted for FY 2017.
  - It’s much easier to see this on a visual than listen to it on a podcast.
  - You can find the link to this blog post in today’s show notes.

The next step in the appropriations process is to think about next year.

And that’s continue to work on the fiscal year 2019 spending bill.

The Trump administration, you may recall, released its fiscal year 2019 budget request last month.

The White House proposed an $11.5 billion, or nearly 22 percent, cut in funding for HUD compared to the 2018 enacted omnibus level.

The usual next step in budget and appropriations is for Congress to consider a fiscal year budget resolution.

But, congressional leaders have decided not to pursue a budget resolution before the midterm elections in November.

Without a budget resolution, using the reconciliation process for the budget bill is not an option.

This means any spending or tax proposal cannot pass with a simple majority.

So given the challenges of passing significant legislation close to the election, I expect Congress will not be able to draft and pass all 12 annual spending bills by Sept. 30.

Meaning, we’re likely going to need another continuing resolution to keep the government funded beyond Sept. 30.

In the meantime, if you have any questions or observations about the fiscal year 2018 omnibus bill and what it means for affordable housing, I’d encourage you to share your thoughts with me on Twitter.

You can tag me with my handle, @Novogradac.
OTHER NEWS

- In other news, HUD issued its annual report last week on tenants of LIHTC properties.
  - The report is based on information as of Dec. 31, 2015.
  - In the report, HUD notes that median incomes for LIHTC households was just under $17,500 per year.
  - The report said that 44.5 percent of households earned 30 percent or less of the area median income.
  - Now this data was similar to reports from previous years, meaning there continues to be a dire need for affordable housing.
- Meanwhile, the Government Accountability Office (GAO) last week made public its report on HUD’s administration of the Rental Assistance Demonstration (RAD) program.
  - GAO’s report was critical of HUD, but primarily for how it measures success in the program.
  - The GAO called for HUD to select better inputs and to identify goals for its leverage-ratio measurements, as well as four other recommendations.
  - Now again, the report neither praised nor criticized RAD.
    - The report merely said HUD needs to improve its oversight and use of metrics in assessing RAD.
- Elsewhere, the California Tax Credit Allocation Committee has announced that it has a new online application for properties seeking 4 percent LIHTCs and tax-exempt bonds.
  - The application will be submitted to both state agencies that review them.
  - There are four deadlines remaining this year to submit those applications.
    - The next one is May 18.
- And finally, the New York state Senate passed a budget proposal that would retain the timing as to when you can claim the HTCs as well as extend the state HTC program through the year 2025.
  - The bill also delinks the state HTC from the federal tax credit, such that recent changes to the federal HTC wouldn’t affect the state HTC.
    - Now this Senate-passed proposal stands in contrast to a proposal by Gov. Andrew Cuomo to defer claiming several tax credits, including the HTC and the state LIHTC.
    - Cuomo’s proposal would limit tax credits that could be claimed by a taxpayer to $2 million per year and defer the ability of the tax payer to claim the balance of the credits until 2021.
    - Cuomos’s proposal would also allow the state HTC to sunset after 2019.
    - Now the state budget is due this Saturday, and Cuomo and leaders in the Legislature are negotiating how to close a $4.4 billion deficit.
    - We’ll keep an eye on where negotiations end for these tax credit provisions.
 RELATED RESOURCES

FY 2018 Omnibus
Consolidated Appropriations Act of 2018

Notes from Novogradac blog: Congress Agrees to Historic Funding for HUD in Fiscal Year 2018 Omnibus Spending Bill

Notes from Novogradac blog: Omnibus Spending Bill Contains Affordable Housing Credit Improvement Act Provisions

HUD LIHTC Tenants Report
Understanding Whom the LIHTC Serves: Data on Tenants in LIHTC Units as of December 31, 2015

GAO RAD Report
Rental Assistance Demonstration: HUD Needs to Take Action to Improve Metrics and Ongoing Oversight