

In this week's Tax Credit Tuesday podcast, Michael J. Novogradac, CPA, gives an update on primary election results of longtime community development tax credit champion: Rep. Richard Neal. Then, he discusses an announcement from the CDC that temporarily halts residential evictions through Dec. 31, 2020. Next, he briefly discusses a U.S. District Court ruling about the right of first refusal for a low-income housing tax credit property. He wraps up with a preview of a Novogradac special report about the upcoming presidential election and how the results could affect affordable housing, community development, renewable energy and historic preservation.

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GENERAL NEWS

Richard Neal Wins Primary

First, I want to start today's podcast by congratulating House Ways and Means Committee Chairman Richard Neal on winning the Democratic primary in his state of Massachusetts. He has no Republican opponent for the general election in November, so it is extremely likely he will return as chairman for the next Congress.

Chairman Neal is a long-time supporter of the new markets tax credit, low-income housing tax credit and other community development tax incentives. This is important for the community development world. As chairman of the tax-writing committee in the House, he has great influence over when and how tax bills get considered by his committee.

Chairman Neal has also been a keynote speaker at several Novogradac new markets tax credits conferences. Most recently, he spoke at our Novogradac 2020 New Markets Tax Credits Virtual Conference on July 23. At our conference, Chairman Neal discussed the future of the new markets tax credit, which is scheduled to expire at the end of this year. Chairman Neal vowed to push for a new markets tax credit extension this year.

We'll discuss the prospects of a permanent new markets tax credit at our next new markets tax credit virtual conference, being held Oct. 29-30. I'll tweet the registration link.

CDC Temporary Eviction Moratorium

As you may have heard by now, the Centers for Disease Control and Prevention, or CDC, last Tuesday issued a temporary eviction moratorium for residential housing until Dec. 31. The temporary halt on tenant evictions is meant to help prevent the further spread of COVID-19. Unlike the eviction moratorium under the CARES Act that was enacted in March, this CDC order is not limited to properties with federal backing.

That said, the CDC order does not apply to jurisdictions with an eviction moratorium that provides the same or greater level of public-health protection. Under the CDC order, landlords may not evict any "covered" person for nonpayment of rent. A "covered" person under the order includes: single taxpayers with gross incomes of no more than \$99,000, or joint filers with gross incomes no more than \$198,000.

These were the same income thresholds for the CARES Act economic impact payments. In fact, if a taxpayer received a CARES Act economic impact payment, that individual is considered a "covered" person under the CDC order.

To invoke protection under the CDC order, tenants must prepare a document declaring that they qualify as "covered" by the order. Tenants make the declaration under the penalty of perjury. There are also potential criminal penalties for landlords who violate the order.

So, that is a summary of protections offered under the CDC order. Just as important to note is what the order does not do.

The order does not prevent evictions for reasons other than not paying rent. The order does not relieve any obligation to pay rent or to comply with any other obligation under the lease. The order also does not prevent landlords from charging or collecting fees, penalties or interest as a result of the failure to pay rent.

Some housing providers and housing advocates have expressed concern that the CDC order, without any rental housing assistance, would ultimately harm the people the order aims to help. The Real Estate Coalition, that represents for-profit and nonprofit housing providers, last week sent a letter to House and Senate leaders, urging them to provide stable and dedicated rental and unemployment assistance to prevent a potentially imminent housing crisis. House Financial Services Committee Chairwoman Maxine Waters expressed similar concerns in a statement last week.

Chairwoman Waters called for emergency rental assistance to help families that may have to repay many months of accrued back rent in one lump sum. She said the order only delays evictions, it doesn't prevent them. The chairwoman said the \$100 billion in emergency rental assistance funding included in the Democrats' HEROES Act would provide the critical relief that families need.

Read more about the CDC order in a Notes from Novogradac blog post that my colleague Mark Shelburne wrote. I'll include a link to the blog post in today's show notes and I'll tweet the link, as well.

Right of First Refusal Ruling

A U.S. district court in New York recently issued a ruling that will be of interest to many low-income housing tax credit property owners, managers and investors.

The court ruled that the right of first refusal granted to a nonprofit under Section 42(i)(7), does not require the low-income housing tax credit partnership to sell the property at end of the 15 year tax credit compliance period. The court concluded that the right of first refusal in the agreement operates by the New York common law definition of the term – right of first refusal.

The case involved a partnership that entered a right-of-first-refusal agreement with a nonprofit in 1999. The nonprofit contended that there were no conditions precedent to it exercising its ROFR. In short, the nonprofit contended that the agreement operated as if it were an option to purchase the property, such that the ROFR required the partnership to sell the property to the nonprofit after the 15-year compliance period.

The limited partner was not willing to consent to the partnership selling the property. Hence, the dispute. The limited partner said that the right of first refusal comes into play only if a third party makes a bona fide offer to purchase the low-income housing tax credit property and the partnership is willing to sell. In this case, the property was not for sale and no offer was received.



The court sided with the limited partner. The court ruling said that what was granted in the 1999 agreement was, quote, “a right of first refusal, not an option,” end quote. Therefore, the partnership cannot be compelled to sell to the nonprofit under current conditions.

We have posted the ruling on our website and will link to it in our show notes.

OTHER NEWS

In other news, let's follow up on something I mentioned a few weeks ago. Novogradac is working on a special report about what to expect if Democrats retain control of the House and win back control of the White House and Senate in November.

We're not saying that is going to happen, but the report will examine the implications for community development, affordable housing, renewable energy and historic preservation, tax, appropriations and regulatory policy if Democrats sweep the election.

The report will include a discussion of what tax credit incentives could be expanded or extended. The report also looks at some proposed incentives that would stand a greater chance of becoming law if Democrats controlled Congress and the White House.

In the report, we will also take a look at 10 toss-up Senate races and what the Democratic candidates have said about taxes. If pundits are correct on the other races, Democrats would need to win six of these 10 races to get to get a tie of 50 members in the Senate. Republicans hold eight of the 10 seats in the toss-up races, so that involves some of them flipping from Republicans to Democrats.

In the case of ties in the Senate, the vice president casts the tie-breaking vote. And of course if Joe Biden wins the presidency, all ties would be broken by Vice President Kamala Harris.

It's still eight weeks until Election Day, but this report is a good look into what might happen in 2021 and beyond and who the key players would be. We expect to release our special report later this month, before our Historic Tax Credit Virtual Conference, that's being held Sept. 24th and 25th.

The report will be free to clients, and a small charge for non-clients. I'll keep you updated on the progress of the report and its release.



Related Resources

Chairman Neal Primary

[Register for the Novogradac 2020 New Markets Tax Credit Fall Virtual Conference](#)

CDC Eviction Moratorium

[Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19](#)

Right of First Refusal

[Riseboro Community Partnership Inc. vs. Sunamerica Housing Fund 682](#)

Novogradac Events

[Upcoming Novogradac Events](#)