NOVOGRADAC TAX CREDIT TUESDAY PODCAST

Summary: Sept. 17, 2019

In this week's Tax Credit Tuesday Podcast, Michael J. Novogradac, CPA, talks about Congressional efforts on a continuing resolution bill to fund the federal government past the Sept. 30 deadline. After that, he'll talk about a hearing on housing reform finance plans, followed by a discussion of three bills: one to encourage property sales to public housing authorities, one to incentivize building more housing near transit and another to expand and extend the energy-efficient new home credit. He'll also share insight on final regulations on 100 percent expensing under Section 168(k), as well as information about updated certification requirements for the CDFI program and the Native American CDFI Assistance applicants. He'll close with information from California on opportunity zone conformity legislation, a rent control bill that passed the legislature and a survey on the state's expanded low-income housing tax credit.

Summaries of each topic:

GENERAL NEWS

Avoiding a Government Shutdown

- I want to start off with a quick update on congressional efforts to avoid a government shutdown at the end of this month–at the end of September.
- The House is expected to vote on a continuing resolution this week.
- The continuing resolution would keep the government open through Nov. 21.
- The top priority of Congress since it returned from the August recess is to keep the government funded past Sept. 30.
    - That's two weeks from yesterday.
- As the clock ticks down before a potential shutdown, it's becoming more likely that we'll see another stopgap funding measure as opposed to individual fiscal year 2020 appropriations bills.
- The House did pass 10 of 12 appropriations bills for 2020 before the August recess.
    - However, as I have noted in prior podcasts, those bills were written before the Bipartisan Budget Act set the overall budget.
- The full Senate has not passed any appropriations legislation yet, but the Senate Appropriations Committee approved the 2020 defense bill as well as energy and water appropriations bills last week.
- More mark ups are scheduled this week and next.
- For example, Jennifer Shutt of Roll Call reports that the Senate Appropriations Committee's Subcommittee on Transportation and HUD is scheduled to consider its fiscal year 2020 bill today before the full committee holds a T-HUD markup on Thursday.
    - On a side note, do check out the Notes from Novogradac blog for analysis of the HUD bill.
- The 2020 bill that would fund Treasury is also scheduled to be considered today.
- I'll also note that last week, the Senate Appropriations Committee did approve the 2020 funding allocations to each subcommittee.
    - The THUD subcommittee received nearly $1.5 billion less than the House THUD subcommittee received.
- I'll keep you updated on any progress in future podcasts.

Housing Finance Reform Hearing

- I discussed in last week's podcast that Treasury and HUD had released housing finance reform plans.
    - Those plans included ending conservatorship of Fannie Mae and Freddie Mac.
- Well, the Senate Banking Committee last Tuesday held a hearing on those plans.
- Treasury Secretary Steven Mnuchin, HUD Secretary Ben Carson and Federal Housing Finance Agency director Mark Calabria testified at the hearing.

- Senate Banking Committee Chairman Mike Crapo of Idaho said many recommendations within the Treasury and HUD plans are consistent with the principles that he released in his own housing reform outline earlier this year.
    - Areas of agreement between Crapo's plan and the Treasury and HUD proposals include attracting private capital back to the market, setting up taxpayer protections against future bailouts and increasing competition.
- Chairman Crapo asked about next steps for the housing finance reform plans.
- To that end, Secretary Mnuchin said that Treasury expects to make an agreement with FHFA soon to allow Fannie and Freddie to begin retaining their earnings by modifying or ending the net worth sweep agreements.
    - Under those net-worth sweep agreements, Fannie and Freddie transfer net profits to the federal government quarterly.
- A move to end this profit transfer would allow Fannie and Freddie to rebuild their capital and improve their safety and soundness as they prepare to return to private shareholder ownership.
- In terms of how to achieve housing finance reform, the witnesses agreed on pursuing changes legislatively and administratively.
- Secretary Mnuchin said that working with Congress to find bipartisan solutions is a priority.
- But, he said Treasury, HUD and FHFA would also work on regulatory reform administratively, as well.
- You can read more about the Treasury and HUD housing finance reform plans on the Novogradac website.
- I'll include links in today's show notes and tweet them out as well.
- I also want to alert you there will also be an article by Buzz Roberts on the plans, these housing reform plans, in the October issue of the Novogradac Journal of Tax Credits.
    - If you don't know, Buzz is the president and CEO of the National Association of Affordable Housing Lenders.

FHFA Revises Fannie Mae, Freddie Mac Multifamily Loan Purchase Caps

- While we're on the topic of Fannie and Freddie, the Federal Housing Finance Agency last week announced multifamily loan purchase caps of $100 billion each for Fannie and Freddie.
- These caps will apply for the fourth quarter of 2019 to the fourth quarter of 2020, basically making it an $80 billion a year cap.
- Previously, the cap structure limited Fannie and Freddie's multifamily mortgage loan purchases to just $35 billion each year.
    - The cap previously excluded loans for affordable housing and energy or water efficiency projects from the caps: so-called green loans.
- Now, as I said, we'll see a jump in multifamily loan purchase cap from $35 billion to $80 billion a year, $100 billion over five quarters.

- FHFA said the purpose of the cap is to support liquidity in the multifamily market, especially in affordable housing.
- Now, since the affordable housing loans will be a part of the overall cap, as opposed to being excluded, FHFA had to set or direct a minimum amount that Fannie and Freddie need to use that cap toward mission-driven affordable housing.
- And to that end, FHFA directs at least 37.5 percent of Fannie Mae and Freddie Mac multifamily business must be focused on mission-driven affordable housing.
- So over the next five quarters, of the $100 billion available, $37.5 billion or more would need to be focused on mission-driven affordable housing.
- Most lenders think the net result of this, the green loans that were excluded from the $35 billion annual cap, you'll see less of those.
- You won't see less mission-driven affordable housing loans.
- I should also note these new caps apply to all multifamily business.
- There are not any exclusions.

Affordable Housing Incentives Act of 2019

- Now let's also talk about bills that are in Congress, both affordable housing and renewable energy related.
- On the affordable housing topic, a bill was introduced this month to allow for the non-recognition of gain on real property that was sold for use as affordable housing.
- Essentially, the bill allows you to avoid gain recognition as an incentive to increase the stock of affordable housing options by incenting owners to sell their property to public housing agencies.
- Specifically under the bill, owners who sell to housing agencies get the option to avoid a capital gains tax liability by purchasing a replacement property within three years.
- Supporters of the bill say that the proposal would allow public housing authorities to be more competitive when buying land for dedicated affordable housing developments.
- The bill is entitled the Affordable Housing Incentives Act of 2019, or H.R. 4239.
- The lead sponsor is Democratic Rep. Adam Schiff of California.
- A link to the bill text is in today's show notes and I'll also tweet it out as well.
- I'll also tweet out the next two bills I'm going to talk about.

Build More Housing Near Transit Act

- The second bill, also housing related, Democratic Rep. Scott Peters of California introduced a bipartisan bill, the Build More Housing Near Transit Act.
    - This legislation would change the rating criteria for the Federal Transit Administration's New Starts program.

  - Specifically, the bill would require housing feasibility assessments to determine how and where housing units could be built near new transit stops.
  - The bill would also prioritize local commitment to change land use policies to accommodate market-rate and affordable housing.
  - The Build More Housing Near Transit Act aims to facilitate the construction of more housing, it aims to increase transit ridership as well as maximize the return on federal investments.

Building Efficiently Act

- A third bill, on energy, was a bill was introduced Thursday to extend and expand the Section 45L tax credit.
- That's the new energy-efficient home credit as well as to create a new tax credit worth up to 3.3 percent of the total construction cost for residential rental properties that reduce energy use by 40 percent or more.
- That's a mouthful, but it's basically a new energy-efficient tax credit or an existing property tax credit.
- The bill would also extend the Section 179D commercial property energy efficiency deduction through the year 2020.
  - As you probably know, Section 179D can be used for multifamily housing.
- The bill includes provisions <u>not</u> to reduce low-income housing tax credit basis by the amount of Section 45L credit, by the Section 179D deduction and the renewable energy investment tax credit.
- The Affordable Housing Credit Improvement Act, you may recall, does include an identical provision not to reduce basis by the amount of the energy incentives
- The bill's sponsors are two Democrats:
- Reps. James Langevin of Rhode Island and Peter Welch of Vermont.
- The bill is called the Building Efficiently Act of 2019 and it's H.R. 4317.
- You can find a link to the bill in today's show notes and as I noted earlier, I'll tweet out the links to all three bills.

Other News

- Now turning to other news, the Treasury Department will be publishing in the Federal Register soon final regulations on the additional first-year depreciation deduction, the 100 percent expensing if you will, that's allowed under Internal Revenue Code Section 168(k).
    - The final regulations clarify–and this is a big item in the affordable housing community and other areas–that when you go to expense property, if there's any tax-exempt use property, then the tax-exempt entity's proportionate share of the property is the portion not eligible for the first-year depreciation deduction.
    - There was concern that any tax-exempt use share of property, the entire property might be eligible for 100 percent expensing or 100 percent depreciation deduction.
    - It's great to see the IRS take this position.
    - Now I will share a copy of the final regulations in today's show notes.
- Turning to renewable energy news, last week the IRS asked for comments on Notice 2010-54.
    - So what is Notice 2010-54?
    - Well that notice provides guidance regarding claiming the production tax credit, or PTC, for refined coal.
    - Furthermore, the notice also modified the definition of refined coal and allowed certain processing of utility-grade coal to be taken into account for determining emissions reductions.
    - I'll provide a link to the notice in today's show notes and tweet it out.
- Now turning to CDFI Fund community development news, last week the fund announced an update to the certification requirements for applicants for both the CDFI program or the Native American CDFI Assistance program.
    - Beginning with the fiscal year 2020 application round, applicants for the CDFI program and the Native American CDFI Assistance program must be certified CDFIs by the date the notice of funds availability is published in the Federal Register.
    - The key here is the CDFI Fund is no longer going to process CDFI certification applications at the same time as they are processing funding applications.
    - So what does this mean?
    - If you plan to apply for program funding, you should plan ahead and submit your certification applications as soon as possible.
    - The CDFI Fund tentatively plans to publish the fiscal year 2020 NOFA for the CDFI and NACA programs in early 2020.
    - That being said, I'd encourage you to go ahead and apply for CDFI status now–apply this year.
    - And if you need assistance with your application, I'd encourage you to reach out to Bob Ibanez in our Jacksonville, Fla., office.

- So now, let's turn to state-level news, news in the largest state in the union.
- The California state Legislature last week adjourned for the year and they did not consider opportunity zones state conformity legislation.
  - The deadline to introduce legislation for consideration in the 2019 legislature was Sept. 10.
  - That means the next chance for the California state legislature to address OZ conformity will be when it reconvenes in January 2020.
- In other news in California, lawmakers last week approved legislation to create statewide rent control.
  - A.B. 1482 would limit annual rent increases to the lower of 10 percent or 5 percent plus the cost of living.
  - Furthermore, the bill would help protect tenants against unjust evictions.
  - The bill attempts to provide this protection by requiring a landlord to have and to state a just cause if they're going to try to terminate tenancy for tenants who have occupied the premises, the unit, for 12 months or more.
  - The rent cap and the just cause eviction provisions are subject to exemptions, so there are properties that are not subject to these rules.
  - What are they?
  - Well, I'll give you three.
  - There are other exemptions, but I'll give you three:
    - Any housing built in the past 15 years is exempt,
    - Also housing that's restricted by a deed or regulatory agreement with a government agency,
    - As well as single-family residences unless owned by a real estate trust or a corporation.
  - The bill would effectively exclude LIHTC and private activity bond properties because they are deed-restricted properties with regulatory agreements with government agencies.
  - As an aside, LIHTC and bond-financed housing already have rules that limit rents through the way in which rents and qualifying income levels get determined under tax guidelines.
  - In terms of rent cap, as you know, HUD has ceilings that are applied to income limits used for LIHTC and private activity bond finance projects.
  - HUD does not allow income limits to increase by more than the greater of 5 percent or twice the change in national median family income.
  - Rent limits are generally derived from these HUD-restricted income limits, so they have the same rent cap.
  - In terms of just or good cause, LIHTC rules requires a good cause prior to termination of tenancy.
  - Whether an eviction from a LIHTC property has good cause is determined by applicable state and local law.
  - Although LIHTC and private activity bonds are exempt from AB 1482, any of these developments with market-rate tenants would likely be affected by the bill.

  - In other words, market-rate units within a mixed-income property will likely be subject to the new statewide rent control and just cause eviction protection.
  - A.B. 1482 provisions would expire in 2030 and would not preempt any local rent control or just cause ordinances.
  - A.B. 1482 now awaits Gov. Gavin Newsom's signature.
  - The New York Times reported that Gavin Newsom has said he would sign the bill.
  - A detailed explanation of the legislation will be posted on the Notes from Novogradac blog this week.
- Staying with California news, California housing news, the California Tax Credit Allocation Committee, or TCAC, opened a survey last week.
  - The survey is meant to help TCAC prepare for application submissions with respect to the $500 million in additional state low-income housing tax credits that will be available in calendar year 2020.
  - As you may know, the additional $500 million is for 4 percent low-income housing tax credit new construction multifamily housing developments.
  - TCAC may accept applications for the state LIHTC as soon as November 2019 for a January 2020 credit reservation.
  - If you're thinking of applying or want to learn more about how to access this $500 million in state tax credits, please reach out to Jim Kroger in our California office or reach out to Thomas Stagg, he's in our Seattle, Wash., office, but he does a lot of work in California.

RELATED RESOURCES

Novogradac 2019 Financing Renewable Energy Tax Credits Fall Conference

Register

Housing Finance Reform

Treasury Housing Reform Plan

HUD Housing Finance Reform Plan

Fannie, Freddie Caps

Fact Sheet: New Multifamily Caps for Fannie Mae and Freddie Mac

Affordable Housing Incentives Act of 2019

H.R. 4239, Affordable Housing Incentives Act of 2019

Building Efficiently Act of 2019

Building Efficiently Act of 2019

Depreciation Deduction

Final regulations on additional first-year depreciation deduction under Internal Revenue Code Section 168(k).

CDFI Fund Requirements

An update to the certification requirements for applicants of a CDFI program or Native American CDFI Assistance (NACA) program

California Rent Control

California A.B. 1482

CTCAC Survey

$500 Million Non-Competitive State Credit for 4 Percent Credit New Construction Multifamily Housing Survey

Novogradac 2019 NMTC Application Webinar

[Novogradac 2019 NMTC Application Webinar]