Summary: June 24, 2014

In this week's Tax Credit Tuesday podcast, Michael J. Novogradac, CPA, discusses House Majority Leader Kevin McCarthy's voting record, Shaun Donovan's confirmation hearings for the top spot at the Office of Management and Budget, and Sen. Ron Wyden's 15-month window for tax reform. In new markets tax credit news, he shares some remarks about the next round of the New Markets Tax Credit program from New Markets Tax Credit Program Director Bob Ibanez, a report from Native American Capital that compares the loan loss rates of new markets tax credit loans to those of collateralized mortgage-backed securities, and the addition of a new qualified issuer for the Bond Guarantee program. In low-income housing tax credit news, he discusses a call from A.C.T.I.O.N. to support for legislation that creates a permanent 9 percent floor for the low-income housing tax credit program, Julian Castro's remarks at his confirmation hearing for Secretary of the Department of Housing and Urban Development and good news about California's budget. In historic tax credit news, he shares updates from Rhode Island and Maryland. In renewable energy tax credit news, he alerts listeners to an article about Novogradac Journal of Tax Credits article about development fees for renewable energy projects.

Summaries of each topic:

GENERAL NEWS

Rep. Kevin McCarthy's Voting Record

- In general news, I begin with a discussion of the voting record of the new House majority leader.
- As you've undoubtedly heard by now, Kevin McCarthy of California has been elected House majority leader.
- Novogradac & Company has researched his voting record and the bills he sponsored during his time in Congress.
- Here's what we've found.
- In 2009, McCarthy sponsored a bill that would have extended the renewable energy production tax credit through the year 2020.
    - He also sponsored an act in 2008 that would have increased a residential energy efficiency tax credit for solar property.
- He also cosponsored a few renewable energy bills.
    - These include five bills in 2008 and 2009 that would have extended or modified the production tax credit and investment tax credit.
- He also cosponsored the Violence Against Women Reauthorization Act of 2012.
    - This bill applied domestic violence protections to government-assisted housing, including low-income housing tax credit supported housing.
- His voting record for new markets tax credits and low-income housing tax credits is rather sparse, but I would note that he did vote for legislation extending the PTC and ITC.
- He voted for
    - The American Taxpayer Relief Act of 2012 and
    - The Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010.
- Additionally, McCarthy has voted in favor of several low-income housing tax credit bills and new markets tax credit bills as part of larger bills.
- He voted against the American Recovery and Reinvestment Act of 2009.
- I also have a blog post that is coming that gives additional information on Kevin McCarthy's voting record in these areas.

Wyden Tax Reform Window

- In other news, I'd like to share Sen. Ron Wyden's most recent plan for tax reform.
- The Chairman of the Senate Finance Committee told the Wall Street Journal that he sees a 15-month window for tax reform.
- The window would close in August 2015.
- After that, he says, Congress will be consumed by the 2016 presidential campaign.
- Sen. Wyden would like to begin with the tax extenders package and then move on to other measures.
- Those would include reducing the corporate tax rate to 24 percent and eliminating some loopholes in the tax code.
- Stay tuned for more on the tax reform debate.

Shaun Donovan Hearings

- In other news from Capitol Hill, Housing and Urban Development Secretary Shaun Donovan testified before two Senate committees as part of the nomination process for moving into the top spot at the Office of Management and Budget, or OMB.
- President Obama nominated Donovan as director of the OMB on May 22.
- Donovan spoke before the Homeland Security and Government Affairs Committee and the Budget Committee on June 11.
- During the committee hearings, both committee chairs praised Donovan’s work at HUD and supported his nomination to the OMB.
- Donovan also laid out his priorities to the committees.
- They are threefold.
    1. He will work with Congress to make progress on the budget,
    2. He will work to advance the president’s management agenda, and
    3. He will continue the administration’s regulatory focus on maintaining a balance between protecting health, welfare and safety with promoting economic growth, job creation, competitiveness and innovation.
- At the time of this recording, the Senate has not voted on Donovan’s nomination.
- That vote is expected shortly.
- And Donovan is expected to be confirmed.
- I’ll report the results of that vote when it takes place.
- A hearing for Donovan’s replacement at HUD, San Antonio Mayor Julian Castro, was held on June 17.
- And I’ll report on that later in the podcast.

NEW MARKETS TAX CREDIT NEWS

Bob Ibanez Remarks

- In new markets tax credit news, I'd like to share some remarks that Bob Ibanez made at the Novogradac New Markets Tax Credit Spring Conference.
- Ibanez is the New Markets Tax Credit program manager at the Community Development Financial Institutions Fund, more commonly known as the CDFI Fund.
- He gave Friday's keynote address at the new markets tax credit conference.
- During his speech, he shared information about the 2014 application round, a compliance frequently asked questions and a report that the Government Accountability Office, or GAO, will be releasing on the program.
- As I tweeted June 13, Ibanez said that the CDFI Fund is planning to open the next NMTC application round in late July.
    - Applications will be due two months later, so around late September.
- At the time of his speech, Treasury officials were reviewing the notice of allocation authority.
- And officials were considering having a combined 2014 and 2015 round.
- He said that at this time the CDFI Fund anticipated awarding $5 billion in authority for each year.
- Congress has not authorized additional allocation at the time of this recording, so the CDFI Fund is using the amount that President Obama requested in his budget.
- This two-year application round would be a one-time event.
- The idea is to allow the allocation rounds to catch up with the calendar years in which the tax credits are available.
- After that combined round, the CDFI Fund would go back to single-year allocation rounds.
- So, the NOAA for calendar year 2016 would be issued in the summer of 2015.
- Ibanez also said that there are going to be a few changes to this year's application.
    - They include changes to business strategy and related exhibits, which removes the distinction between real estate and non-real estate qualified active low-income community businesses, or QALICBs.
        - Those categories are going to be collapsed into the loans in or investments in QALICBs.
    - It also increases the timeframe to make investments into Federal Emergency Management Agency disaster areas and have them be considered higher distress areas.
        - It is now 36 months from the time of the initial declaration.
    - Management capacity and experience, as well as capitalization strategy will not be scored in the first phase of the review process.
        - It will be evaluated in the second phase of the review process, however.
- He said that the CDFI Fund also plans to issue a new compliance FAQ document before the fall.
- The CDFI Fund is still working with the GAO to address several aspects of the NMTC program, including overhead cost, long-term ownership of projects, project failures and overlap with other federal programs.
- However, the details of that report from the GAO have not been made public.
- But, Ibanez said that it would be released soon.

- He also said that the CDFI Fund is planning to solicit comments from the public on minority community development entities.
- Ibanez was able to pack quite a lot of information into his 15-minute speech.
- And I'd like to thank him for speaking to our attendees and sharing his thoughts.

NAC Data States that NMTCs have Low Loan Loss Rates

- In other new markets tax credit news, I'd like to discuss new data released by Native American Capital, or NAC, that suggests that new markets tax credits have lower loan loss rates compared to other products' loan loss rates.
- This research compares the NMTC program's loan loss rate to comparable data from the collateralized mortgage-backed securities, or CMBS, sector.
- CMBS are securitized commercial mortgage loans backed by mortgages on commercial properties.
    - The report compares NMTC data with both Moody's and Standard & Poor's rating agencies.
        - NMTC information was gathered from 2003 to 2013.
    - And the two rating agencies track the historical loss rates in the CMBS sector.
        - Moody's analyzed data from 2000 to 2013, and
        - Standard & Poor's analyzed data from 1995 to 2012.
- NAC reported an NMTC loan loss rate of 0.9 percent.
- This is a fraction of the loan loss rate reported for mortgage-backed securities.
    - Moody's and Standard & Poor's both calculated CMBS loan loss rates to be around 3 percent.
- The report found that several factors may contribute to the exceptionally low loss rate for the NMTC-backed loans.
    - This includes the Treasury Department's strong regulatory oversight, according to the report.
- The report suggests the possibility of securitization of NMTC loan pools.
    - First, the report suggests that NMTC loans be marketed at a lower price than non-NMTC loan pools.
    - Second, the report says that a tranche of securitized NMTC loans is more likely to be supported by a pool of higher quality loans than a comparable tranche of CMBS securities.
        - According to the report, NMTC securitized instruments mature without significant defaults and write offs.
        - Consequently, subsequent securitizations backed by these loans will receive higher ratings.
- To read the report, go to www.newmarketstaxcredits.com.

CDFI Fund Approves New Qualified Issuer for Bond Guarantee Program

- In new markets tax credit news, the CDFI Fund has approved a new qualified issuer for the CDFI Bond Guarantee program.
- Earlier this month, the CDFI Fund announced that it has selected Stonehenge Community Capital as a qualified issuer for the fiscal year 2014 round.
    - Stonehenge Community Capital may now issue bonds and make bond loans to eligible CDFIs for investments in low-income communities.
    - The bond guarantee program is authorized at $750 million for fiscal year 2014.
- Stonehenge Community Capital is the program's fifth qualified issuer.

- Three of the other qualified issuers were previously approved under the fiscal year 2013 round.
- They are:
    - Community Reinvestment Fund,
    - Opportunity Finance Network and
    - TriSail Funding Corporation, which is a subsidiary of Bank of America.
- The fourth qualified issuer was approved just last month.
- And that's the Wisconsin Housing and Economic Development Authority, also known as WHEDA.
- If you have any questions about the bond guarantee program, I encourage you to contact my partner Diana Letsinger in our metro Long Beach, Calif. office.

LOW-INCOME HOUSING TAX CREDIT NEWS

A.C.T.I.O.N. Sends Letter to Chairman Camp

- In low-income housing tax credit news, I'd like to discuss a letter that was recently sent to Ways and Means Committee Chairman Dave Camp.
- The letter urges Chairman Camp to include a number of low-income housing tax credit provisions in current extender bills.
  - It was sent by A Call to Invest in Our Neighborhoods, or A.C.T.I.O.N.
  - A.C.T.I.O.N. is a national, grassroots campaign that focuses on ensuring that low-income families across the country have access to affordable rental housing.
- The letter urges the committee to extend the expired provision that sets a minimum 9 percent low-income housing tax credit rate for new construction and substantial rehabilitation and it establishes a new minimum 4 percent rate for allocated tax credits for acquisition.
- The letter states that over time, Congress went from having a 9 percent and 4 percent floor to having floating rates.
- The credit percentage was calculated based on a discount rate that was derived from monthly calculations of federal borrowing costs.
  - The letter went on to say that floating rates make it more difficult to finance affordable housing.
  - The inability to allocate more low-income housing tax credits to a development because of the floating rate results in a loss of equity.
- The letter says that the floating rate needs to be eliminated because that loss of equity leads to:
  - greater financial uncertainty,
  - heightened administrative complexity and
  - financing gaps caused by the reduced amount of private equity that a development can receive for its low-income housing tax credit allocation.
- The letter ends by urging the Ways and Means Committee to enact these modifications as soon as possible.
- To read the letter, go to www.taxcredithousing.com.
- If you have any further questions about the letter, please contact my partner Lance Smith in our San Francisco office.

Julian Castro Speaks Before the Senate Banking Committee

- In other low-income housing tax credit news, I'd like to discuss San Antonio Mayor Julian Castro's recent confirmation hearing with the Senate Banking Committee.
- President Obama nominated Castro for Secretary of the U.S. Department of Housing and Urban Development on May 22.
- Last week, Mayor Castro spoke before the Senate Banking Committee and discussed several topics.
- These included
  - his stance on the reformation of Fannie Mae and Freddie Mac,
  - the future of the Federal Housing Administration, and
  - a 2012 HUD inspector general audit of San Antonio.
- According to an article from The Hill, Senators expressed little opposition to Mayor Castro's nomination for Secretary of HUD.

    - In that same article, Sen. Bob Corker, R-Tenn., said he will support Castro's nomination.
    - Castro said in his testimony that if he is confirmed, he would promote more cross-agency collaboration to improve housing, educational achievement and overall quality of life.
    - He also said that he understands the value of measuring results and that HUD shouldn't just track projects and dollars spent, but measure investments by the impact they make.
- The Senate is expected to take a vote soon on whether to confirm Castro as head of HUD.
    - As soon as the Senate vote takes place, I'll provide an update.

California State Budget Designates New Funds for Affordable Housing

- In state-level low-income housing tax credit news, California passed its 2014 to 2015 state budget this month.
- The Assembly has set aside $100 million from the general fund for multifamily housing.
- Of the $100 million, $50 million will go to the multifamily housing program and the other $50 million will go to the multifamily housing supportive housing program.
- An additional $130 million in cap-and-trade revenue was approved for the Affordable Housing and Sustainable Communities program.
- At least $65 million of that will go to affordable housing.
- Lawmakers also approved a long-term spending plan that would set aside 20 percent of future cap-and-trade revenues for the Affordable Housing and Sustainable Communities program.
- The governor signed the budget on June 20.
- So stay tuned as we have more details as to how this capital will be made available for affordable housing in California.

California State BOE Issues Analyses of PILOT Bills

- And, there's even more good news from California.
- The California State Board of Equalization came out with very positive analyses of two bills that would strengthen the property tax exemption for affordable housing.
- More specifically, as it relates to the state's payment in lieu of taxes, or PILOT, program.
- Under current law, local governments can collect PILOT payments from owners of developments that qualify for a welfare property tax exemption.
- The idea is to compensate local governments for services they provide to the developments, such as ambulance and fire services.
- To be eligible for the property tax exemption in the first place, owners have to certify that the funds they saved in property taxes are used to maintain the affordability of units for low-income households.
- Some owners are worried that they might lose their property tax exemption for the years in which they made PILOT payments.
- One assembly bill would address this issue by creating the presumption that any PILOT payments made *were*, in fact, used to maintain the affordability of lower-income household units.
- The bill would also void and prohibit PILOT agreements entered into on or after Jan. 1, 2015.

- The other bill came from the Senate.
- It would likewise prohibit PILOT agreements for low-income rental housing, with just a few exceptions.
- The bill would also delete the requirement that the property tax savings from the exemption be used to maintain the property's eligibility.
- Both bills are making their way through the California legislature and we'll keep you updated on their progress.
- In the meantime, you can find the text of both Assembly Bill 1760 and Senate Bill 1203 at www.taxcredithousing.com.
- If you have any further questions, I encourage you to contact my partner Jim Kroger in our San Francisco office.

HISTORIC TAX CREDIT NEWS

Rhode Island HTC

- In historic tax credit news, I have an update on the Rhode Island historic tax credit.
- The state Senate passed a fiscal year 2015 budget on June 16.
- And the governor signed the bill on June 19.
- The bill is the same bill that the House passed last week.
- And, unfortunately, that bill did not include funding for the state's historic tax credit program.
- This is a setback for Rhode Island's historic tax credit program.
- As you may recall, the General Assembly last year reinstated the program for commercial projects.
- Applicants could receive up to 25 percent of qualified rehabilitation expenditures.
- Rather than reauthorizing funds for the program, however, the General Assembly reallocated $34.5 million in abandoned credits that had been returned by other projects.
- Twenty-six projects were funded by those credits.
- But, 27 projects were left on a waiting list.
- Now, because the budget doesn't end the program, these projects and others could still receive tax credits if the General Assembly passes a bill funding the program.
- It remains to be seen if such a bill will be introduced.
- I'll bring you any relevant updates on the program in future podcasts.

Maryland Accepting Applications for HTCs

- In other state-level news, Maryland has opened the fiscal year 2015 application round for the Competitive Commercial Tax Credit program.
- The program provides a 20 percent tax credit for eligible expenses.
- Projects can receive up to $3 million in credits.
- They can earn an additional 5 percent of credits if the property achieves a LEED Gold certification or the equivalent.
- The Maryland Historical Trust will accept applications until Aug. 31.
- On Sept. 1, the state will begin accepting applications for smaller projects with up to $500,000 in eligible expenses.
- The credit cap for those projects is $50,000.
- And work must not begin before Jan. 1, 2015.
- This is the first round of funding for the Small Commercial Tax Credit program.
- The General Assembly created the program in April.
- At the same time, it reauthorized the Competitive Commercial Tax Credit program for three years.
- If you'd like to learn more about the state program, or would like assistance with a project that might qualify for the program, please contact my partner Charlie Rhuda in our Boston office.
- He can be reached at 617-330-1920.

RENEWABLE ENERGY TAX CREDIT NEWS

Development Fees

- In renewable energy tax credit news, I'd like to talk about an article that will be featured in next month's Novogradac Journal of Tax Credits.
- It concerns development fees on renewable energy tax credit projects.
- Forrest Milder from Nixon Peabody is covering the topic in his July "Current" column.
- The article defines development fees.
- It also discusses
    - the importance of arm's length transactions,
    - what constitutes a reasonable development fee,
    - what is included in development services and
    - alternatives to development fees.
- Additionally, it stresses the importance of properly documenting development fees,
    - as well as the technical issues that can be triggered by deferred development fees.
- As I said, this article will appear in the July issue of the Novogradac Journal of Tax Credits.
- If you are not a subscriber, there's still time to get a paper or iPad subscription.
- Simply go to www.novoco.com/products and select the Journal of Tax Credits.