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Optimism Reigns at Introduction of NMTC Permanency Legislation

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Oftentimes, according to an old adage, the best defense is a good offense.

That continues to be the strategy of new markets tax credit (NMTC) advocates, who responded to the likelihood of comprehensive tax reform Feb. 15 by reintroducing legislation in the House and Senate to make the NMTC a permanent part of the tax code.

The conclusion of the 114th Congress saw the previous NMTC permanency bill die, so Republican and Democrat legislators introduced the New Markets Tax Credit Extension Act of 2017 in both the House and Senate.

"We still think this is the best opportunity for it to be permanent," said Bob Rapoza, founder and president of Rapoza Associates and a spokesman for the New Markets Tax Credit Coalition, an industry advocacy group. "We thought it was a good idea to get the bill in and seek permanent authorization."

During the frenetic, unprecedented start to the 115th Congress–with cabinet appointments, a Supreme Court nomination, a spate of executive orders and President Donald Trump's unconventional leadership style–this event, at least, was familiar: It was the third straight session of Congress in which a bill was introduced to make the NMTC program permanent. And this was a powerful start, according to Rapoza.

"It was a great showing for us," he said. "The important thing is that a large number of Republicans cosponsored right off the bat."

The bipartisan bill was introduced in both houses of Congress. Reps. Pat Tiberi, R-Ohio, and Richard Neal, D-Mass., introduced H.R. 1098 in the House, while Sens. Roy Blunt, R-Mo., Ben Cardin, D-Md., Charles Schumer, D-N.Y., and Kirsten Gillibrand, D-N.Y., introduced S. 384 in the Senate.

"In the House, there was a great reaction," Rapoza said. "Tiberi deserves a lot of credit for this. It was very encouraging."

Significant Volume, Power of Cosponsors

The House legislation benefited from both the quantity and quality of original cosponsors. There

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were 22 original cosponsors in the House, with 12 of them from the GOP.

Perhaps even more significantly, 17 original cosponsors–Rep. Neal, Rep. Tiberi, Rep. Tom Reed, R-NY, Rep. Mike Kelly, R-Pa., Rep. Pat Meehan, R-Pa., Rep. Ron Kind, D-Wis., Rep. Brian Higgins, D-N.Y., Rep. Erik Paulsen, R-Minn., Rep. Jason Smith, R-Mo., Rep. Earl Blumenauer, R-Ore., Rep. Danny Davis, D-Ill., Rep. Mike Thompson, D-Calif., Rep. John Larson, D-Conn., Rep. Linda Sanchez, D-Calif., Rep. Bill Pascrell, D-N.J., Rep. Terri Sewell, D-Ala., and Rep. James Renacci, R-Ohio–are on the Ways and Means Committee. Furthermore, another Ways and Means Committee member, Rep. Carlos Curbelo, R-Fla., joined the group the day after the bill was introduced. That means nearly half of the 38-member, tax-writing committee are cosponsors of the bill.

In the Senate, the presence of Blunt (the third-ranking Republican in the Senate) and Schumer (the top Democrat) added gravitas.

The legislation calls for not only permanence for the NMTC, but an inflation adjustment in future years and for alternative minimum tax (AMT) relief for NMTC investors. The inflation adjustment is based on 2010 dollar figures, which would put 2017's allocation amount at approximately $4.94 billion.

There wasn't a huge surprise in who introduced the bill, although Neal's role in sponsoring the bill was unusual. Congressional tradition is that the Ranking Member of the House Ways and Means Committee doesn't co-sponsor tax bills, but Neal still stepped forward to assume the role of lead co-sponsor.

The NMTC is no stranger to legislation, whether it's tweaking provisions of the program or more sweeping legislation, including special allocations to regions hit hard by natural disasters.

The extension of the program has been a consistent focus. Since the NMTC became part of the tax code when President Bill Clinton signed the Community Renewal Tax Relief Act of 2000 just a few weeks before leaving office (launching the first round of NMTC allocations in 2003), there were extensions in 2006, 2008, 2010, 2013, 2014 and 2015.

The most recent extension gave a measure of stability to NMTC investors, when the Protecting Americans Against Tax Hikes (PATH) Act passed. It added a five-year extension to what had become an annual effort to renew the NMTC. We saw the first fruits of it with the combined 2015-2016 NMTC allocation round in November providing $7 billion in authority to 120 allocatees based in 36 states, the District of Columbia and Puerto Rico. And there are further annual allocation rounds coming later this year as well as in 2018 and 2019.

But it's not permanent. Not yet.

Previous Efforts for Permanence

February's bills give the NMTC equal standing with such things as the low-income housing tax credit (LIHTC) and historic tax credit (HTC) in the Internal Revenue Code. Many of previous NMTC permanence bills shared cosponsors.

In the 113th Congress, former Sen. John Rockefeller, R-W. Va., and Sens. Blunt, Cardin, Susan Collins, R-Maine, and Maria Cantwell, D-Wash., introduced the New Markets Tax Credit Extension Act of 2013. Before that session of Congress ended, they had nine cosponsors, split evenly between the parties. The House version, introduced a year later by former Rep. Jim Gerlach, R-Pa., Reps. Neal, Tiberi and five cosponsors, finished with 81 cosponsors (55 Democrats and 26 Republicans).

In the 114th Congress, Tiberi, Neal and Reed were cosponsors of The New Markets Tax Credit Extension

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Act of 2015 in the House, which ended up with 67 cosponsors (40 Democrats and 27 Republicans). Meanwhile, Blunt, Schumer, D-N.Y., Cardin, and Sen. Steve Daines, R-Mont., were original cosponsors of the Senate version, which finished with 13 cosponsors (eight Democrat, five Republican), showing the broad range of support.

Boosting the Bill in 2017

Now a version of the bill is back–and there's early reason for optimism that it will at least equal the last Congressional session's totals for sponsors. That's because 11 of the 12 cosponsors of the Senate bill in the 114th Congress are back and 59 of the 66 cosponsors of the House bill retained their spots.

It's not the only NMTC-related bill. The Creating Opportunities for Rural Economies (CORE) Act was introduced in both the House (H.R. 405) and Senate (S. 76) in the opening days of the session. The CORE Act would mandate that at least 5 percent of each NMTC allocation round go to distressed coal communities–further evidence of enthusiasm for the NMTC program.

"Tiberi and Blunt said they think people understand the program and the bill," Rapoza said, suggesting the permanence bill benefits from momentum of previous introductions.

Of course, the major wild card this year is the prospect of comprehensive tax reform.

Republicans vowed to make this a priority, even considering the use of budget reconciliation–which allows the Senate to pass it with a simple majority, rather than the 60 votes needed to stop a filibuster; but can't increase the deficit beyond 10 years. Some Republicans hope to persuade eight Democrats to come to their side and allow reform to be passed without reconciliation, but that remains to be seen.

The House Republican tax reform blueprint, published in summer 2016, is silent on tax credits, which has led to a significant effort to preserve the LIHTC, HTC and NMTC.

There's reason to think the substantial support for NMTC permanence–especially with the number of cosponsors on the Ways and Means Committee and the fact that Cardin is on the Senate's tax-writing Finance Committee–will make a difference.

Supporters of the NMTC program, of course, have plenty of ammunition to support the permanent extension. As the CDFI Fund frequently reminds us, the NMTC program generates $8 in private investment for every $1 invested by the federal government. About three-quarters of NMTCs have been invested in severely distressed low-income urban and rural communities in the history of the program, giving investment in areas that were the focus of the 2016 presidential election that swept Trump and the Republicans to power.

In addition, more than $5.3 billion in federal tax revenue has been generated by the program, plus another $3 billion in state and local tax revenue. And the wage income generated by NMTCs has gone well beyond $30 billion.

The number of supporters for the program continues to impress. In early February, about 2,000 groups signed a letter to Congress, asking for permanent authorization and expansion of the NMTC program. There were signees from every state and a wide range of stakeholders.
Then the bill was introduced and the momentum for passage was in high gear. "It was a great showing for us," Rapoza said.

When combined with the introduction of the Investing in Opportunity Act–which relies on NMTC definitions, is a similar policy and had 37 cosponsors in the House

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and 11 in the Senate–the New Markets Tax Credit Extension Act and its broad-based support shows that momentum is increasing for NMTC permanence.

We'll see how the great start plays out. ❖

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