Summary: February 11, 2020

In this week's Tax Credit Tuesday podcast, Michael J. Novogradac CPA, talks about key points from the Trump Administration's budget proposal. Specifically, he talks about what the budget proposes for affordable and public housing funding. Next, he talks about President Trump's mention of opportunity zones in the State of the Union address. He then discusses a public housing hearing held by the House Financial Services subcommittee on Housing, Community Development and Insurance. He also shares an update on the Puerto Rico emergency supplemental appropriations bill that was passed by the House of Representatives, and he shares an update on final versions of Form 8996 and 8997 that were released by the IRS. Then, he talks about a report released by Rep. Earl Blumenauer and six of his colleagues that calls for an increase in affordable housing funding. Finally, he discusses legislation that was introduced in Kentucky and Maryland to create state LIHTC programs, and a ruling in Alabama to take into account extended use agreements when valuing LIHTC properties.

Summaries of each topic:

GENERAL NEWS

Administration FY 2021 Budget Request

- Starting with the Trump budget, the Trump administration released its proposed $4.8 trillion budget for fiscal year 2021 yesterday, on Monday.
    - The annual budget proposal is important because it indicates priorities for the Trump administration, even if the final budget adopted by Congress will look very different.
    - The proposal lets us see where the president stands on some key issues in affordable housing and community development.
    - Congress is expected to draft its own 2021 budget proposal in the coming months, which may or may not include some of the administration's proposals.
- That said, let's look at a few key specifics that the 2021 budget proposal calls for:
    - First of all, similar to last year, the budgets calls for a 15 percent cut in HUD funding.
        - In terms of dollars, that's an $8.6 billion reduction from the 2020 budget.
        - The HUD funding proposal would eliminate the Community Development Blog Grant, Choice Neighborhoods Grants and the HOME Investment Partnerships programs.
        - These are critical programs that help fund affordable housing and community development needs.
        - For public housing, there's good news and bad news.
        - The good news is that the budget request includes $100 million for the Rental Assistance Demonstration program.
        - The bad news is that the proposal would eliminate the public housing capital fund.
        - The capital fund, as you likely know, provides crucial financial grants to public housing agencies to address deferred capital needs.
        - Elimination of the capital fund means losing a resource that helps modernize development and improve public housing.
    - Another blow to community development under the Trump budget proposal is the elimination of all CDFI Fund grant funding.
        - The CDFI Fund would only receive an administrative budget of $14 million–less than half of this year's administrative budget.
        - Administrative budget cuts could seriously impair the CDFI Fund's ability to provide efficient service to existing grantees and NMTC allocatees.
- In terms of timing and process for the budget proposal, there is a long path ahead.
    - As I noted earlier, fiscal year 2021 doesn't begin until Oct. 1 and given that it's a presidential election year, it's likely Congress will not pass all 12 annual spending bills before that date, by the Sept. 30 deadline.
    - As a reminder, if you look at last year, the fiscal year 2020 budget wasn't officially approved until Dec. 23, 2019, after several continuing resolutions to get us to that date.
    - That was nearly three months after the end of the previous fiscal year.
- We will have more information on the budget proposal this week in the Notes from Novogradac blog.
- I'll also discuss more details in next week's podcast.
- I will tweet out links to blog posts as they are published.

- You can rest assured that the final budget that Congress does ultimately approve and get signed by the president, will be nothing like what's being proposed.

Opportunity Zones in SOTU

- Now, during the State of the Union speech given by President Trump last week, the opportunity zones incentive did get a high level shout out.
  - The mention of opportunity zones early in Trump's speech continues the administration's efforts to boost the visibility of the tax incentive.
  - The applause that his mention of opportunity zones received was a sign of support for opportunity zones by many leaders in Congress.
  - Which is good news for investors and other opportunity zones stakeholders.
- In the State of the Union speech, Trump highlighted Tony Rankins, one of his guests.
  - Rankins was a homeless veteran who now works with a group that builds and renovates housing in opportunity zones.
  - Trump cited Rankins' work as an example of how the incentive is working well.
- In his praise of opportunity zones, President Trump singled out Sen. Tim Scott of South Carolina.
  - Sen. Scott, as you know, was a lead sponsor of opportunity zones legislation along with Democratic Sen. Cory Booker.
  - Novogradac was honored to feature Sen. Scott as a keynote speaker at a Novogradac new markets tax credit conference in Washington in 2018.
  - Sen. Kyrsten Sinema of Arizona, a Democrat, stood and applauded when Trump praised Scott and the incentive.
- Sen. Scott, you may also know, is a cosponsor of two pieces of legislation that would require the Treasury Department to track investment in opportunity zones.
  - While there is widespread pessimism that major tax legislation will pass this year, Politico reported last week that Rep. Ron Kind, a Democrat on the Ways and Means Committee, hopes to get a reporting requirement bill to the full House this year.
- By the way, the White House Opportunity and Revitalization Council released a report Friday.
  - The council, you may remember, was formed in 2018 to streamline and coordinate federal resources to be used in opportunity zones.
  - The report highlights all the recommendations the council has made and what actions have been taken.
    - Guess how many recommendations there are: 223, and the report says action has been taken on 180 of those 223 recommendations.
  - There are two legislative suggestions in the report.
    - The first, no surprise, is for an impact-reporting bill.
    - The second is for legislation to centralize federal economic assistance resources for use in opportunity zones.
  - There's a link to the report in today's show notes and I'll tweet that out as well.

Public Housing Hearing

- Elsewhere in Washington last week, the House Financial Services Subcommittee on Housing, Community Development and Insurance held a hearing that will be of interest to many of our listeners.

- The hearing was labeled, “A future without public housing? Examining the Trump administration’s efforts to eliminate public housing.”
    - Based on that title, you can probably guess the direction that this hearing went.
    - This is particularly important to those in public housing and affordable housing in general.
    - How Congress addresses public housing will have an impact on all of affordable housing.
    - One important factor is HUD’s Rental Assistance Demonstration program, or RAD, which has been used to renovate hundreds of thousands of public housing apartments.
    - RAD conversions often use low-income housing tax credit equity.
    - As a consequence, developers and investors have a major stake in what happens to public housing, and I know many of our listeners did join us at our Rental Assistance Demonstration Public Housing conference held in Florida in January.
- Now, no surprise as I said earlier, many speakers at the hearing criticized the Trump administration’s approach to cutting funding for public housing programs.
- But Rep. Steve Stivers, a Republican from Ohio, talked about flexibility.
    - Stivers highlighted RAD.
    - Stivers and Financial Services Chairwoman Maxine Waters differed on the effectiveness of RAD, although much of Waters’ concerns were about unanswered questions not observed results.
    - Waters admitted she doesn’t fully trust the private sector to handle public housing.
- Stivers made it a point throughout the hearing to ask witnesses about the benefits and hurdles in the RAD program.
    - He also asked stakeholders to make suggestions on improving RAD.
- While the hearing was on public housing in general, it provided a great chance for public housing stakeholders and those who support RAD to clarify what is needed as the program continues to expand.
- We at Novogradac work a lot with the RAD program, and if you have questions about it, I’d encourage you to reach out to my partner Rich Larson in our New Jersey office, or reach out to Nick Hoehn in our Austin, Texas office.

Other News

- Turning to other news, of note, the House of Representatives last week did pass a $4.89 billion supplemental disaster relief package for Puerto Rico.
  - As part of the package, there's a $50 million increase in low-income housing tax credit.
    - That is $500 million over 10 years.
  - The legislation also includes $500 million in new markets tax credit allocation for 2020 and 2021 to be exact.
  - This disaster package is to assist Puerto Rico in recovering from the recent earthquakes.
  - For this bill to become law the Senate would also have to pass it and it would have to be signed by President Trump.
  - The White House has expressed opposition to the bill, saying Puerto Rico is already set to get $90 billion in disaster funds.
  - While there is opposition, I would also like to note that it is likely the administration and the Senate will consider a supplemental appropriations bill at some point during the year to respond to another major disaster.
  - When that bill comes, this Puerto Rico disaster supplemental bill could be considered in negotiations over such a bill.
  - I'll keep you posted as the bill moves along.
- In other opportunity zones news, the Internal Revenue Service did release final versions of two forms for the opportunity zones incentive.
  - We've been following these forms closely, particularly through our work through the opportunity zones working group.
  - You may recall that a few weeks ago I talked about drafts of these two forms that were released by the IRS.
  - There's two forms: 8997 and 8996.
  - These are the forms you'll use if you participated in opportunity zone investment last year.
  - Form 8997 is used by investors in qualified opportunity funds.
  - Form 8996 is used by a qualified opportunity fund to annually report it met the 90 percent investment standard during the tax year.
  - While most of the changes to the forms for the final drafts were formatting and structuring changes, there were a few changes to the instructions for Form 8996, which is used by the qualified opportunity fund.
  - I'll include a link to the final versions of the forms in today's show notes.
  - If you are an investor or a qualified opportunity fund and you need help interpreting these forms so you can complete them correctly and include them in your tax returns correctly, I'd encourage you to contact a Novogradac partner near you.
  - We have many partners specializing in the opportunity zones incentive, and we'd be happy to work with you on them.
  - You can find information on Novogradac partners who specialize in the opportunity zones incentive at www.novoco.com/services.
- In affordable housing news, last week Rep. Earl Blumenauer of Oregon and six of his colleagues last week released a report calling for increases in housing needs funding and other resources.
  - The report is a framework that declares housing a fundamental human right.

  - The fact that the report calls for doubling the national annual low-income housing tax credit cap is an encouraging sign of the widespread support of the low-income housing tax credit incentive.
  - Increasing the low-income housing tax credit cap is also a provision of the Affordable Housing Credit Improvement Act, albeit not doubling it but increasing it by 50 percent.
  - Other provisions of Blumenauer's report include:
    - Making HUD's Section 8 program an entitlement that covers anyone eligible,
    - The creation of a renter's credit, and
    - $10 billion in annual public housing capital funding.
  - There's a link to the report in today's show notes and I'll tweet it out as well.
- Now we have some state-level news dealing with the low-income housing tax credit, namely the states of Kentucky and Maryland and efforts to create state low-income housing tax credit incentives.
  - State affordable housing tax credit incentives can help close the gap in funding and allow for more properties to be funded.
  - Support for those incentives at a state level are a good indicator that legislators recognize how valuable the incentives are.
  - The Maryland program that's been introduced would provide credits to developers who enroll in the program in 2021 through 2023, and credits would be issued to properties that require funding to make the development economically feasible.
    - Basically, it's designed to be gap funding.
  - The Kentucky legislation would introduce the state credit for five years and it would be available to properties placed in service on or after Jan. 1, 2021.
  - I should also note that legislation was introduced in California to create a tax credit to keep affordable housing income restricted instead of converting to market rate once their affordability restrictions end.
  - In case you're wondering how many states have a low-income housing tax credit incentive, our recent count is that there are 15 states that do currently have a state LIHTC.
  - Five other states have introduced legislation to create or expand state affordable housing tax credit incentives since the beginning of January, including:
    - Indiana,
    - Missouri,
    - Oklahoma,
    - Utah and
    - Hawaii.
- Before closing, I do want to discuss a recent Alabama circuit court opinion that dealt with the valuation of a LIHTC property.
- Specifically, the state was valuing the property excluding any extended use agreements and as a consequence the properties had greater values than they would have if you had taken into account the extended use agreement.
- The valuation of the LIHTC properties is a recurring theme on this podcast as various states, counties and other jurisdictions have taken different approaches to valuing tax credit properties.
  - Most notably, do you take into account rent restrictions and if so, for how long, and to what extent do you assess the value of the tax credits. .

- The state's policy in Alabama was to disregard low-income housing tax credit extended-use restrictions in determining the property's value for annual property taxes.
- As a consequence, the value of the property was much higher, leading to higher property taxes and higher operating expenses, albeit their rents were restricted.
- But, thankfully, the Alabama circuit court ruled against that approach.
- This is obviously good news for affordable housing in Alabama is that Alabama counties now, absent of a successful appeal, have to take into account legal restrictions on rents, use and operation of low-income housing tax credit properties when they determine the annual property tax assessment.
- If you have any questions about this either in Alabama or in another state, please reach out to a Novogradac partner near you.
- We do a decent amount of work associated with valuing these properties for purposes of property tax appeals and the like.

Related Resources

Trump Administration Budget Request

- A Budget For America's Future
- Novogradac Web Page With Budget Request Documents

Opportunity Zones in State of the Union

- Report to the President from The White House Opportunity and Revitalization Council

Opportunity Zones Forms

- Form 8996
- Form 8997
- Form 8996 Instruction

Blumenauer Report

- Locked Out: Reversing Federal Housing Failures and Unlocking Opportunity
- One Page Summary

Affordable Housing Legislation

- California A.B. 2058
- Maryland S.B. 715
- Kentucky H.B. 371

Alabama Court Ruling

- Jefferson County Circuit Court Ruling

Novogradac 2020 Opportunity Zones Conference

- Registration