NOVOGRADAC TAX CREDIT TUESDAY PODCAST

Summary: March 26, 2019

In this week's Tax Credit Tuesday Podcast, Michael J. Novogradac, CPA, shares news on House and Senate hearings on disaster recovery, tax reform and housing finance reform. He also has an update on the status of the nomination of Mark Calabria as the next Federal Housing Finance Agency director. He talks about when Congress may consider tax extender and disaster relief legislation. Then, he highlights certain key issues he's hoping will be addressed in opportunity zones guidance that could help increase investment in underserved areas. After that, he has some brief news relating to veteran housing and private activity bonds, low-income housing tax credit and private activity bond allocations for 2019 and HUD inspections. He closes with some state efforts to increase community development and historic preservation investments through tax incentives.

Summaries of each topic:

GENERAL NEWS

House, Senate Hearings

- Congress is back in session this week, after last week's state and district work period.
- Now I want to touch briefly on three key hearings worth keeping on your radar this week.
- First up, the House Financial Services Committee's Oversight Subcommittee is scheduled to hold a hearing today on the administration of disaster recovery funds in the wake of Hurricanes Harvey, Irma and Maria.
  - This hearing is also expected to include discussions of the Reforming Disaster Recovery Act of 2019.
  - Proposed legislation that would permanently authorize the Community Development Block Grant-Disaster Recovery, or CDBG-DR, program.
  - Now the proposed legislation would direct HUD to provide standardized rules for all CDBG-DR grantees to follow.
  - The thinking is that standardized rules would make the flow of CDBG-DR funding to disaster areas more effective and more efficient.
  - I'll also wait to hear whether committee members will call for disaster allocations of the low-income housing tax credits (LIHTCs) and new markets tax credits (NMTCs).
- Now another hearing to keep on your radar is tomorrow's House Ways and Means Committee hearing on tax reform.
  - On tax reform, I'll keep an eye on Chairman Neal's comments regarding tax, or technical, corrections.
  - It's clear that Democrats are not just going pass technical tax corrections without having some of their tax priorities addressed.
  - But Neal could signal what he might be thinking of along those lines.
- Such legislation might be a vehicle for tax credit provisions.
- In the Senate, the Banking, Housing and Urban Affairs Committee will hold a two-day hearing on housing finance reform today and tomorrow.
  - Now it will be important to see what Senate Banking Committee Republicans say on the affordable housing goals on the Housing Trust Fund, Capital Magnet Fund, and on the Duty to Serve mandate.
  - Now the Crapo bill outline that was released in February maintains and increases the Housing Trust Fund & Capital Magnet Fund.
  - It does away with the affordable housing goals, though, and replaces them with a Market Access Fund, and is unclear about Duty to Serve.
  - Now it will also be worth keeping an eye out for any LIHTC comments.
  - It will be interesting to see how willing Senate Banking Democrats will be to negotiate on the bill.
- I'll report back on these hearings in next week's podcast.

Updates on Calabria, Housing Trust Fund, Capital Magnet Fund

- In related news, a full Senate vote on the nomination of Mark Calabria as the next director of the Federal Housing Finance Agency remains in the category of pending.

  - Cowen Washington Research Group reports that Senate Majority Leader Mitch McConnell has prioritized other issues over confirming the next FHFA director.
  - It has been suggested that the Senate may consider Calabria's nomination after voting on the Green New Deal resolution this week.
  - The delay in Calabria's confirmation could also be affecting the funding of the Housing Trust Fund and the Capital Magnet Fund.
  - The funding allocations that were set-aside last year by Fannie Mae and Freddie Mac have not yet been transferred to HUD and the Treasury's CDFI Fund.
  - It has been suggested that the transfer of those funds may be on pause until after Calabria is confirmed.
  - In the meantime, the funding delay means significant dollars for affordable housing and community development is not yet flowing to help the low-income families and communities that need it.

Status of Tax Extenders, Disaster Tax Relief

- Meanwhile, Politico reports that the House Ways and Means Committee plans to consider a bill – a tax bill – next month, April, that will likely include extending expired tax provisions.
  - Now it's not clear yet what the exact timing of the bill will be or what will be included.
  - But, Ways and Means could try to include certain tax related disaster relief provisions in such a bill.
  - Possible tax provisions targeted to disaster areas could include additional LIHTCs, more NMTC allocation authority, as well as a higher historic tax credit (HTC) percentages, which would be similar to what was included in the GO Zone Act to help the recovery from Hurricane Katrina.
  - Now the challenge, as I've noted previously, is that the House has re-adopted the PAYGO rule for this Congress.
  - PAYGO requires legislation that cuts taxes or increases spending be offset with tax increases or spending cuts, so that the deficit doesn't go up.
    - Basically, pay as you go.
  - Now the Senate, on the other hand, has not taken the position that tax extenders need to be offset.
  - They've taken the position tax extenders do not need to be offset.
  - Now it's not clear how this dispute will be resolved.
  - I will note, thought, House Ways and Means Committee Chairman Richard Neal's Chief Tax Counsel, Andrew Grossman, was quoted in the press saying that the House could waive the PAYGO rule for extenders.

Opportunity Zones Issues

- So, let's switch topics now to opportunity zones.
- It's been two weeks since the IRS submitted the second tranche of regulatory guidance for opportunity zones to the Office of Information and Regulatory Affairs, or OIRA.
  - OIRA is a division of the White House Office of Management and Budget.
- Now I wrote a Notes from Novogradac blog post on 20 opportunity zones regulatory guidance issues that we at Novogradac are watching closely.

- Now depending on whether and how these issues are addressed will greatly influence the success of the opportunity zones incentive in driving equity investment into distressed communities.
- Now I'm not going to list all 20 of the issues here.
- However, there will be a bonus podcast later this week where I discuss the 20 issues.
- In the meantime, you can check out the Notes from Novogradac blog post for more detailed information.
- That said, I do want to highlight a couple of the issues in this podcast.
- For one, I would like the second tranche of guidance to address the 90 percent and 70 percent asset test.
    - Opportunity funds must hold at least 90 percent of their assets in opportunity zone property.
    - And a qualified opportunity zone business must have "substantially all" of its tangible property, owned or leased, qualify as opportunity zone business property.
    - Now the proposed regulations define "substantially all" as meaning 70 percent.
    - However, the first tranche of proposed opportunity zones guidance released last October would require that opportunity funds and qualified opportunity zone businesses use generally accepted accounting principles, or GAAP methods, to calculate compliance with the 90 percent and 70 percent asset tests, if they have applicable financial statements.
    - The Novogradac Opportunity Zones Working Group recommended to the IRS that the final regulations should allow the option to use unadjusted cost basis to value tangible property, regardless as to whether you have an applicable financial statement.
    - Now there are many reasons why we believe the mandatory use of GAAP financials isn't appropriate, and that using unadjusted cost should be an option. One such reason is that using unadjusted cost basis will prevent a reduction of qualifying assets to the 90 percent and 70 percent asset tests over time just because of depreciation expense.
    - Now the logic is that the mere passage of time and the accumulation of depreciation expense should not cause a qualified opportunity fund to fail the 90 percent asset test or a qualified opportunity zone business to fail the 70 percent asset test.
- Now another issue we're hoping will be addressed in guidance is how long does a businesses have to become an opportunity zone business?
- That is after receiving an investment from an opportunity fund.
    - Now current law is unclear to what extent a business has a grace period to qualify as an opportunity zone business.
        - New businesses that are being organized to become an opportunity zone business and existing businesses that are expanding within or into opportunity zones will need time—they'll need time to acquire and/or improve tangible property and put such property to active use in opportunity zones.
    - The working group recommends providing at least a 12-month safe harbor for a business to become an opportunity zone business.
    - That is, 12 months after the date of investment in the opportunity zone business by an opportunity fund.

    - Now there's an article by Steven Mount, an attorney with Squire Patton Boggs that addresses this issue in the April opportunity zones edition of the Novogradac Journal of Tax Credits.
- I also, last week, asked my Twitter followers which issues they would include like to see addressed.
    - Duncan Kelm wants to know how depreciation will be treated.
    - Gabe Bodhi asked whether refinances will be allowed after stabilization without losing the cap gains "tax shield."
    - OppZone PBC wants to know about recapture.
    - And Mitch Speigle wants to know whether the land exclusion on the substantial rehabilitation test will stand, what amount and clarification of "biz assets" that need to be in an opportunity zone and various reporting needs.
- I want to thank them for commenting on Twitter.
- These comments emphasize the interest in opportunity zones and how certain critical tax issues remain.
- I do invite listeners to send me their thoughts as well.
- What questions do you want answered or addressed in the next tranche – the second tranche – of opportunity zones guidance?
- You can tweet them to me by tagging my Twitter handle, @Novogradac.
- Or, send an email to CPAs@novoco.com.
- As I said, you can find the full list of 20 issues that I'm tracking, at least some of the 20 issues that I'm tracking on the Notes from Novogradac blog.
- And I will also post a podcast later this week where I discuss the 20 issues.
- Now I tweeted the link last week and will include it in today's show notes.
- Also, I recommend you consider joining, if you haven't already, our Opportunity Zones Working Group.
- You can see details on how to join in today's show notes.

OTHER NEWS

- Now in other news, six U.S. senators together sent a letter to IRS Commissioner Charles Rettig last week.
- The letter asked for clarification and confirmation that housing developments for veterans is eligible for tax-exempt private activity bond financing.
  - So why was this letter sent?
  - Well, IRS officials recently informed some bond counsels that the general public use exception in section 42, the LIHTC statute, an exception that allows for housing targeted to specified groups such as veterans, that that section, while it applied to Section 42, did not necessary apply to private activity bond-financed multifamily housing.
  - Now that position would mean that those bonds *cannot* be used for veterans' rental housing.
  - This is quite obviously not the intent of the provision.
  - And the bipartisan group of senators, from Texas, Nevada, California and Hawaii, and they asked the IRS to clarify that veteran's rental housing is indeed eligible.
  - There's a link to the letter is in today's show notes.
- And while we're speaking of the IRS, last week the agency published resident population figures that are used to calculate 2019 LIHTC and private activity bond allocations.
  - The big takeaway is that the LIHTC ceiling for every state will increase this year and the private activity bond cap for nearly every state will also increase this year.
  - That means more funding for much-needed affordable housing.
  - The allocation increase is partly because of population growth, but also because of the temporary 12.5 percent LIHTC allocation boost enacted as part of the fiscal year 2018 omnibus appropriations bill.
  - The populations of Arizona and Idaho grew at the fastest rate.
  - They both increased more than 2 percent in population from 2018 to 2019.
  - Now I wrote a blog post on the matter and will include the link in today's show notes.
- Now, let's turn to the Government Accountability Office.
- They issued a report last week on HUD's Real Estate Assessment Center's inspections of HUD-assisted and HUD-insured properties.
  - Or commonly referred to as REAC inspections.
  - The GAO report calls for 14 changes, all dealing with how REAC selects, trains and monitors the contractors who perform those inspections.
- Now let's turn to state news.
- A bill was introduced in North Carolina to both extend and expand the North Carolina state HTC.
  - This legislation would extend the sunset date 10 years, from the year 2020 to 2030.
  - It would also increase the caps on several specific provisions that provide a boost, including:
    - being in a Tier 1, top-distressed area or
    - a targeted-investment site,

        - and the bill would also add a 5 percent boost for properties in federally declared disaster areas.
    - Now this bill was introduced by 34 members of the House of Representatives.
    - That would be *34* out of 120 members were co-sponsors.
        - Quite a good percentage.
- Meanwhile in Mississippi, legislation to extend the state's NMTC program was signed into law by Gov. Phil Bryant.
    - Now, the program is extended until July 1, 2021.
- And then in state-level opportunity zones news, Oklahoma has combined an existing program with the opportunity zones incentive.
- This administrative move was made by the state Department of Commerce.
    - Oklahoma's priority enterprise zones provide several incentives to investors, including eligibility for a state tax credit for new investment or job creation.
    - Combining those zones with opportunity zones will allow investors to potentially layer in multiple incentives, thereby making it more attractive for investors to drive private capital into low-income communities.
- And then elsewhere, Maryland legislation was introduced in both houses of the Legislature to give a 5 percent bump for HTCs claimed in opportunity zones.
    - Now there already are several conditions under which Maryland properties can get the 5 percent boost.
    - This would add opportunity zones to that list.
    - A boost to the state HTC in Maryland could allow for a project to expand or enhance the scope of its historic preservation work.

RELATED RESOURCES

House, Senate Hearings

House Subcommittee on Oversight and Investigations Hearing on the Administration of Disaster Recovery Funds, March 26
Reforming Disaster Recovery Act of 2019
House Ways and Means Committee Hearing on the 2017 Tax Law, March 27
Senate Committee on Banking, Housing and Urban Affairs Hearing on Housing Reform, March 26-27

Opportunity Zones

20 Issues to Track in the Second Tranche of OZ Guidance, Notes from Novogradac
Novogradac OZ Working Group

Veteran Housing

Senators' letter to IRS Commissioner Rettig about veterans housing and PABs

LIHTC, Bond Caps

Notes from Novogradac blog post: Population Growth, Temporary Cap Increase Boost

LIHTC and Bond Ceilings

Notice 2019-19: Resident population figures for LIHTC ceiling, PAB cap

REAC Report

GAO Report: Real Estate Assessment Center: HUD Should Improve Physical Inspection Process and Oversight of Inspectors

North Carolina

North Carolina H.B. 399 to extend and expand the state historic tax credit

Mississippi

Mississippi S.B. 2598 to extend new markets tax credit program

Maryland

Maryland S.B. 656 to add 5 percent HTC bonus for properties in OZs

Novogradac Journal of Tax Credits Awards

Awards Information