NOVOGRADAC
TAX CREDIT TUESDAY
PODCAST

Summary: April 28, 2020

In this week's Tax Credit Tuesday Podcast, Michael J. Novogradac, CPA covers the recently enacted Paycheck Protection Program and Health Care Enhancement Act. Then, he discusses future COVID-19 relief legislation that may include provisions of the Affordable Housing Credit Improvement Act, the HTC-GO Act and an increase in the federal historic tax credit percentage. He wraps up with news of a forthcoming update to the Novogradac Opportunity Funds Listing.

Summaries of each topic:

GENERAL NEWS

Paycheck Protection Program and Health Care Enhancement Act

The president last Friday, April 24th, signed the Paycheck Protection Program and Health Care Enhancement Act into law. This COVID-19 relief bill authorizes an additional $310 billion in funding for the Paycheck Protection Program, or PPP. That $310 billion is in addition to the $349 billion initially authorized for the PPP at the end of March. The first tranche of funding from March was provided under the Coronavirus Aid, Relief and Economic Security Act, or CARES Act.

This second tranche of $310 billion of funding includes a set aside of $60 billion for lending to small businesses by small-to-medium-sized banks, credit unions and community financial institutions. This set-aside of $60 billion is designed to include community development financial institutions, or CDFIs, as lenders.

Initial demand for PPP loans was so great that the initial funding was quickly exhausted and the Small Business Administration, or SBA, had to stop accepting applications.That’s what led Congress to authorize a second round of funding last week.

Lenders began accepting new applications yesterday.

The PPP is intended to provide forgivable loans to help employers keep workers on their payroll during the COVID-19 pandemic. PPP loans are eligible for forgiveness if the number of full-time equivalent employees over the eight-week period following receipt of loan funds, remains constant. The relative comparison period to determine if the number of employees is constant is either earlier in the year Jan. 1 through Feb. 29, 2020, earlier this year, or most of the first half of last year, the period of Feb. 15 through June 30 2019. The PPP loan should only be used for payroll, rent, mortgage interest or utilities.

The amount of loan that is eligible for forgiveness cannot exceed 133% of the amount of the loan used for payroll. The process for requesting forgiveness also involves certifications, including regarding the need for the funds

Many of our clients and listeners have been asking important questions about the PPP. One initial question was whether affordable housing developers with 500 or fewer employees qualify for the PPP. That uncertainty came up because PPP is an expansion of the existing SBA 7(a) loan program.

SBA 7(a) loans are not available to passive businesses owned by developers and landlords that do not actively use or occupy the assets acquired or improved with the loan proceeds. Naturally, that raised the question of whether affordable housing developers qualify for the PPP and, if so, which entity or entities in their structure could apply.

Novogradac has heard of both for-profit and nonprofit developers being approved for PPP loans. Based on what we’re seeing, it would appear that the main qualifier is that a business is an active business with direct employees. It’s not so much a question of for-profit or nonprofit entity. For example a single-property entity with no employees for which the only activity is holding the title to the property is an example of an entity not likely to receive and be eligible for a PPP loan.

One concern about PPP is certifying at the time of application the need for the loan. The PPP application form requires applicants to certify that current economic uncertainty makes the loan request necessary to support the ongoing operations of the applicant. The challenge with this requirement to certify need is that there's no clear guidance on how businesses would prove that they need the loans.

After making the certification and receiving the loan, some borrowers began to question whether they had sufficient need for the request, and some of these borrowers decided they wanted to repay the loan. To address this, last Thursday the SBA released updated guidance allowing for borrowers to repay loans as long as they do so in full by May 7, 2020.

If you have any questions about the PPP or other resources available to help your business cope with the pandemic's economic fallout, we at Novogradac would like to help. I'll include Novogradac's Megan Murphy and Reza Karim's contact information in today's show notes.

Future COVID-19 Legislation

Now that I've discussed this interim COVID-19 relief legislation, let's talk about the prospects for future phases of relief legislation. More specifically, how affordable housing and community development can play a role in economic recovery.

But first, let's look at a realistic time frame for such legislation.

The good news is that President Trump, House Speaker Nancy Pelosi and Senate Minority Leader Chuck Schumer have all signaled an eagerness to advance an economic recovery package. However, Senate Majority Leader Mitch McConnell said he wants to take a slower approach to the next relief measure, especially in light of the nation's rising debt, both as a result of passing more than $3 trillion in COVID-19 relief legislation, as well as the likely reduction in government revenue resulting from the economic downturn.

After the Senate passed the PPP expansion by unanimous consent last week, Leader McConnell said he does not intend to pass any more legislation by unanimous consent. That means he wants to wait until senators are back in D.C. before considering additional phases of COVID-19 relief. But, we do know that negotiations among House and Senate leadership on the next COVID-19 relief bill are ongoing.

With that in mind, let's look at some of the proposals for an economic recovery package. House Financial Services Committee Chairwoman Maxine Waters is a vocal proponent of rent relief, which she continued to advocate for on the House floor after Friday's vote on the PPP expansion bill. Chairwoman Waters called for additional coronavirus relief legislation, including a proposal to create a $100 billion emergency rental assistance fund.

On the supply side of housing, affordable housing proponents have rallied around several proposals, many of which appear in the bipartisan and bicameral Affordable Housing Credit Improvement Act. One provision of the bill is to create a 4 percent minimum low-income housing tax credit.

I've said in many previous episodes of this podcast that establishing a 4 percent floor would increase the amount of equity available to build and preserve low-income housing tax credit homes. The April tax credit percentage for the so-called 4 percent credit was 3.12 percent. In May, the rate will be a historic low of 3.08 percent.

This adds even greater urgency for Congress to put more dollars into affordable housing and to make affordable rental housing more financially feasible. Novogradac is currently updating estimates on how many new affordable housing units could be created over the next 10 years with the enactment of a 4 percent floor.

Another proposal is to include low-income housing tax credit allocation increases in COVID-19 relief legislation. Affordable housing stakeholders are pushing for a 50 percent allocation boost in 9 percent tax credits, with 25 percent taken each year over two years. Affordable housing advocates are also calling for a reduction in the 50 percent test, the so-called financed by test.

A little bit of background: To qualify for a 4 percent low-income housing tax credit on an entire project, at least 50 percent of a development's aggregate basis must be financed by volume cap tax-exempt bonds. Lowering the threshold of the 50 percent test would give developers some flexibility, which is important in light of construction delays and increased costs caused by the pandemic.That's for existing developments that have already received their allocation and tax-exempt bonds.

The provision would also allow state bond agencies to fund a greater number of affordable housing properties, albeit each property would receive less tax-exempt bond financing. Basically the same amount of tax-exempt bond financing could finance more rental units. There are other requests by housing advocates for rental relief and rental assistance, including various basis boosts for the low-income housing tax credit.

By the way, Novogradac is hosting a webinar on Friday, May 15 about the effects of COVID-19 for low-income housing tax credit development and operations. Webinar instructors will talk about deadline extensions, IRS relief, legislative proposals and more. If you work in affordable housing, you should definitely register. If you can't make it for the live webinar on May 15, you can purchase a recording of the webinar afterward. I'll include a registration link in today's show notes.

Another tax incentive that can also be a major tool in economic recovery is the federal historic tax credit. Historic preservation groups, including the National Trust for Historic Preservation and the Historic Tax Credit Coalition, have jointly released recommendations on how to boost the economy using the historic tax credit. The groups recommend enacting the Historic Tax Credit Growth and Opportunity Act, also known as HTC-GO.

HTC-GO would make small historic rehabilitation projects more feasible and allow the federal credit to be paired more easily with the low-income housing tax credit and the opportunity zones incentive. The groups also recommend temporarily increasing the historic tax credit percentage for rehabilitation projects from 20 to 30 percent of qualified rehabilitation expenditures.

Another way to boost the economic benefits of the historic tax credit would be for the IRS to extend the substantial rehabilitation test for one year. The COVID-19 pandemic has resulted in work delays across the country as social distancing and other measures affect supply chains, construction schedules and inspections. Giving historic preservationists an extra year to meet the substantial rehabilitation test would be helpful.

I'll continue to monitor proposals for COVID-19 relief as details become available.
In the meantime, I encourage you to subscribe to Novogradac's free industry alerts so you can have breaking news delivered to your inbox. I'll include a subscription link in today's show notes and tweet it out as well.

Other News

Now I want to turn to a bit of other news. I'd like you to keep an eye out for a forthcoming update to the Novogradac Opportunity Funds Listing. It's coming this week.

As you may know, Novogradac maintains a list of investments in qualified opportunity funds. The list is based on information that fund managers provide to Novogradac directly and that we gather from other sources, such as press releases. The amount of investment in qualified opportunity funds tracked on the Novogradac Opportunity Funds List is reaching an important milestone.

We're announcing that milestone this week, so stay tuned for that.

This news comes at an important time. Anecdotally, we're hearing that there is a slowdown in opportunity zone investment as the nation reacts to the COVID-19 pandemic, both investment in funds and funds investing in businesses.

While this slow-down in investment may appear to be bad news, the amount of investment already made is encouraging. And the opportunity zones incentive can be an important economic tool in post-pandemic recovery.

As you know, the IRS has already extended the investment deadline for certain eligible investors to July 15. That's for investors who faced a deadline of April 1 or later for their 180-day window to invest.

We hope for more guidance in the coming weeks to further help investors and fund managers navigate the incentive during this time. The Novogradac Opportunity Zones Working Group, and other organizations, have sent a letter to Treasury. The letters seek extensions and regulatory changes to help qualified opportunity funds and businesses address the challenges presented by COVID-19. I'll send a link out to the Opportunity Zones Working Group letter sometime today.

Related Resources

Paycheck Protection Program and Health Care Enhancement Act

Paycheck Protection Program and Health Care Enhancement Act
Small Business Loan Program Interim Final Rule on Paycheck Protection Program (April 3, 2020)

Small Business Administration Interim Final Rule- Promissory Notes, Authorizations, Affiliation and Eligibility (April 24, 2020)

Email Megan Murphy

Email Reza Karim

COVID-19 Legislation

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Novogradac Opportunity Funds List

Opportunity Funds List

Webinars

Novogradac Private Activity Bond and 4 Percent LIHTC Overview Webinar, May 1

Novogradac Online LIHTC Property Compliance Workshop, May 5

Novogradac Effects of COVID-19 for LIHTC Development and Operations Webinar, May 15