Summary: June 23, 2020

In this week's Tax Credit Tuesday podcast, Michael J. Novogradac, CPA, discusses details of an infrastructure package that was introduced by House Democrats called The Moving Forward Act, which includes proposals to expand and enhance the low-income housing tax credit, new markets tax credit, historic tax credit and renewable energy tax credits.Then, he talks about two opportunity zones reports, one form the White House Opportunity and Revitalization Council and the other from the Urban Institute. Next he discusses a letter from nearly 180 House members seeking COVID-19 relief for renewable energy tax credit transactions. He then reviews extended low-income housing transaction deadlines in California, and shares details on how to apply for part of the $1 billion in federal disaster LIHTCs available in California. Finally, he shares a quick update on the status of the California state historic tax credit.

Summaries of each topic:

GENERAL NEWS

Moving Forward Act Infrastructure Proposal

House Democrats yesterday released details and legislative language of their over $1.5 trillion infrastructure package called the Moving Forward Act or H.R. 2.

This bill includes: a robust expansion of the low-income housing tax credit, a permanent extension and expansion of the new markets tax credit, an expansion of the historic tax credit, and a delay in the phasedown of the renewable energy tax credits. The bill also creates a new neighborhood revitalization tax credit.

There is a lot to unpack, so let's start with the low-income housing tax credit provisions.

The Moving Forward Act provides direct additional tax credits by two means. First, a permanent 4 percent low-income housing tax credit floor, and An increase in the annual 9 percent credit per capita amount to $4.56 per capita and small state minimum allocation of $5.2 million, phased in over two years.

The proposal would also lead to more private activity bond financed transactions in two ways. It includes an expansion in the private-activity bond cap. It raises the state ceiling from $105 per capita to $135 per capita. The bill would also lower the 50 percent financed-by test for bond-financed transactions to 25 percent for buildings placed in service in 2020 and 2021.

Many currently unfeasible transactions would become feasible under the bill because the bill includes permanent basis boosts for developments serving extremely low-income tenants, in rural areas and in Native American areas. The bill would also extend to properties financed by tax-exempt bonds the ability of states to approve a 30 percent basis boost.

Regarding direct funding, the legislation provides more than $100 billion for housing, including $70 billion for the public housing capital fund.

I noted earlier that the bill would create a neighborhood revitalization tax credit. Specifically, the bill includes the Neighborhood Homes Investment Act.

The Neighborhood Homes Investment Act is a House bill that would create a single-family tax credit similar to the low-income housing tax credit that would help finance the rehabilitation of deteriorated homes in distressed neighborhoods. The bill was introduced in the House last year by Democratic Rep. Brian Higgins of New York along with Republican Rep. Mike Kelly of Pennsylvania, with several of their colleagues.

A Senate companion bill is expected to be introduced this week by Republican Sens. Rob Portman of Ohio, Todd Young of Indiana, Tim Scott of South Carolina and Democratic Sens. Ben Cardin of Maryland, Sherrod Brown of Ohio, and Chris Coons of Delaware.

As you can see, housing will be a major point of emphasis for the House infrastructure bill. But there are many other provisions that relate to the tax incentives we discuss here.

The Moving Forward Act would make permanent and expand the new markets tax credit. The credit would be permanently extended at $5 billion a year, with an annual adjustment for inflation.

Furthermore, the bill provides an extra $500 million added to this year's 2019 allocation round (for a total of $4 billion), $2 billion extra for the 2020 round (for a total of $7 billion) and $1 billion extra for the 2021 round (for a total of $6 billion). The bill would also allow the new markets tax credit to be claimed against the alternative minimum tax and instructs Treasury to ensure that tribal areas receive proportional allocation, similar to the policy for non-metro areas.

The bill would also increase the historic tax credit from its current 20 percent to 30 percent through 2024. The historic credit would then begin a phasedown back to 20 percent, reaching 20 percent again in 2027. However, certain small projects would permanently qualify for a 30 percent historic tax credit.

The bill would also: Reduce the substantial rehab threshold requirement from 100 percent to 50 percent of adjusted basis, repeal the HTC basis reduction, giving it parity with LIHTC and amend rules to make it easier to use historic tax credits for tax-exempt entities and public schools.

The bill also includes many clean energy provisions. One is a delay of the phasedown of the investment tax credit until 2026. Another clean energy provision is to extend many uses of the production tax credit for facilities that begin construction by the end of 2025.

The House bill will be debated beginning next week, June 30 and July 1. I expect the full House to pass the overall bill next week. It's not clear whether the Senate will act on the legislation before the election. But the existing surface transportation authorization does expire on Sept. 30, like the end of the 2020 fiscal year.

Congress will need to act in some fashion before that expiration.

It's also possible that parts of the Moving Forward Act could make it into the next round of COVID-19 relief legislation as well. We will obviously keep an eye on this legislation.

I shared the text of the Moving Forward Act, the section-by-section summary and a fact sheet in the show notes. I will tweet out a link as well.

Novogradac's Peter Lawrence is writing a blog post with more details on the legislation and I will share a link to that as soon as it's available. Plus, we will discuss this bill in more detail during this week's Affordable Housing Friday Forum.

Novogradac's 2020 Affordable Housing Friday Forums are a three-part virtual event to address the nation's most pressing low-income housing tax credit (LIHTC) topics amidst the current COVID-19 pandemic environment. We have Washington Wire session this Friday that will review the bill in more detail.

I will tweet out a link to register, and include that information in today's show notes.

White House Opportunity Zones Best Practices Report

Now, let's turn now to opportunity Zones.

The White House Opportunity and Revitalization council last week published a report to the president on opportunity zones best practices for various stakeholder groups.The White House Opportunity and Revitalization Council was formed to help state, local and tribal governments leverage opportunity zones for economic development.

The White House council’s report from last week provides opportunity zones best practices and case studies for a variety of stakeholder groups: From local and state governments to charitable organizations and qualified opportunity funds.

Best practices for local governments include using existing community infrastructure and partnerships with revitalization strategies. An example of this is the city of Erie, Pa., which formed local partnerships to raise significant gap financing to support opportunity zones investments.

At the state level, the report notes that states can pass legislation to help make opportunity zones investments more feasible. For instance, Maryland provides financial assistance for opportunity zones projects and a state income tax credit for certain qualified workforce housing in opportunity zones. Many states are also helping drive opportunity zones investments by providing matchmaking services between investors and opportunity zones businesses.

One case study as to what philanthropic groups can accomplish for the opportunity zones incentive comes from the Kresge Foundation and Rockefeller Foundation. They combined to develop the Opportunity Zones Reporting Framework Tool. The framework gives stakeholders a set of universal measures to assess the social impact outcomes of their opportunity zones investments.

For qualified opportunity funds, the report illustrates how opportunity funds can help build affordable housing, expand educational opportunities and develop infrastructure. One timely example shows how opportunity fund capital helped an Ohio medical software startup deploy a medical diagnostic and patient care tool in response to COVID-19.

In sum, the report demonstrates how public and private partnerships can drive effective opportunity zones investments.

In addition to examining opportunity zones strategies from those various perspectives, the report analyzes ways opportunity zones capital can pair with other federal resources. For example, a public housing property in Holyoke, Mass., converted from public housing assistance through Section 8 to HUD’s Rental Assistance Demonstration program. The RAD conversion involved low-income housing tax credits, as well as an opportunity zones investment that helped bridge a significant funding gap.

The final section of this report examines how opportunity zones investment data can help investors, communities and policymakers make informed decisions.

To that end, the president’s advisory council on economic policy plans to release a report quantifying the effects of investments in opportunity zones. There’s no date specified for the release of this report, but the Council of Economic Advisers said the report would be produced this summer—summer 2020. The council’s planned report will track how much capital qualified opportunity funds have raised—that will be a key number to be watching for.

The report will also include how much those opportunity funds have invested in particular opportunity zones businesses. And this report will analyze social and economic indicators to determine which investments have produced the greatest positive changes for residents in distressed communities.

You can read more about the White House council’s best practices report on the Novogradac website. I’ll include a link to the report in this today’s show notes, and tweet it out as well.

Urban Institute Opportunity Zones Research Report

I mentioned that there were two opportunity zones reports. The Urban Institute also recently published a report of its own on opportunity zones. In the report, the Urban Institute offers four broad principles to help policymakers improve the opportunity zones incentive.

The first principle is to provide better support for investment in small businesses.The Urban Institute observed that a vast majority of opportunity zones capital appears to flow into real estate and not operating businesses. And I do note the Novogradac data on fundraising.

The report recommends incentivizing investments in opportunity funds that can provide subordinated debt investment or hybrid debt and equity products to small businesses. Policymakers can also grant greater flexibility around deployment rules to help mission-driven funds that specialize in small business investing.

The Urban Institute's second suggestion is to create policies that provide the largest incentives based on project impact, instead of profitability.

The report's third recommendation is to broaden the opportunity zones investor base by providing a refundable tax credit, rather than a capital gains exclusion. The Urban Institute says that the current incentive limits investors to capital gains holders and freezes out most stakeholders in low-income communities. Moving to a refundable tax credit, Urban Institute argues, could open the door for foundation endowments and pension funds to be used as opportunity zones resources.

The report's fourth and final principle for opportunity zones policymakers is to support mission-driven funds that are accountable to the community. The Urban Institute specifically mentions community development financial institutions or CDFIs. CDFIs do have a long record of investing in low-income communities and taking on higher risks than conventional investors.

As you can see the Urban Institute's report includes a lot of legislative recommendations and not as many related to the administration of the incentive. You can find a link to the report in today's show notes and I will tweet it out as well.

Novogradac is also offering an upcoming opportunity zones virtual conference, as well as two pre-conference virtual workshops. The first workshop is OZ 101: The Basics, coming up next Tuesday, June 30. The second workshop is OZ 201: Overcoming Obstacles, in two weeks on Tuesday, July 7.

In three weeks is the main event, the Opportunity Zones Virtual Conference on Wednesday, July 15. We have a keynote welcome from Senator Tim Scott, a fireside chat with Treasury's Dan Kowalski, and a closing session with representatives from the IRS. This is a conference you won't want to miss.

Please take a moment to register today for the conference, as well as the two workshops. Registration links are in today's show notes and I will tweet them out as well.

House Members Seek RETC COVID-19 Relief

Let's get back to renewable energy tax credits briefly.

A few weeks ago, I did discuss two IRS deadline extensions for both the investment tax credit and the production tax credit. Specifically, IRS Notice 2020-41 extended the four-year continuity safe harbor. The notice also provided a new safe harbor for applying the 3.5

month rule to determine when certain costs can be considered incurred for purposes of satisfying the 5 percent beginning-of-construction safe harbor.

Now, last week on Tuesday, 179 members of the House of Representatives sent a letter requesting COVID-19-related relief for clean energy industry participants. This letter was addressed to House Speaker Nancy Pelosi and House Majority Leader Steny Hoyer.

The letter did highlight the loss of nearly 600,000 jobs in the clean-energy industry through April. The letter said that clean energy jobs disappearing faster than the national average for all jobs during the pandemic. House members said they expected more clean energy jobs to be lost by the end of June as the effects of the pandemic continue to impact jobs across the nation. Even as some communities begin to reopen, unemployment claims do continue to rise.

Many clean energy projects have been delayed due to social distancing requirements, permitting delays or supply chain delays. House members note that many of these projects are facing upcoming tax credit deadlines and potential tax credit reductions. They suggest that the industry is being forced to restrict investment instead of quickly rehiring laid-off workers.

In order to address these problems, the letter requests that House leaders enact a series of policies that will provide relief and certainty for tax equity financing and to ensure maximum benefits.

To that end, these House members suggest the following: Delaying the phasedown of existing renewable energy tax incentives and allow renewable energy tax credits to be received as direct payments.

We saw the Section 1603 payment in lieu of tax credits program enacted in 2009 as a response to the Great Recession.Congress created Section 1603 to increase investment in clean energy during a time when a grant was more useful than a tax credit to investors who may have had reduced tax liabilities.

A provision of the GREEN Act, the comprehensive clean energy tax legislation released by the House Ways and Means Committee last November, would authorize a “direct pay” option similar to the Section 1603 exchange grants, and the Moving Forward Act does include this provision.

These proposed policies would allow renewable energy developers time to get construction timelines back on track. An adjusted timeline would help developers qualify their projects for tax credits before they phasedown or ultimately expire.

And as I mentioned earlier, the Moving Forward Act contains extensions of the renewable energy tax credits as well as other key provisions of the GREEN Act.

If you’re facing difficulties meeting requirements or deadlines with your renewable energy development, I encourage you to contact my partner Tony Grappone for assistance.

If you’re interested in the state of the renewable energy industry as a whole or even parts of it, please register for our Novogradac webinar on this topic being held this Thursday, June 25. The webinar will discuss the state of the renewable energy tax credit equity market, tax credit deadline extensions and renewable energy legislative agendas. Again that renewable energy webinar will be this Thursday, June 25.

I’ll include a link to register for the webinar in today’s show notes. And tweet it out as well.

Lastly, I invite you to join the Novogradac Renewable Energy Working Group. The working group is drafting a letter to Congress requesting COVID-19 relief for renewable energy tax credit participants. I'll share details of the letter in a future podcast as soon as the letter is finalized.

In the meantime, I encourage you to join the working group for a chance to contribute to the letter and future letters that can help shape renewable energy tax credit legislation and administrative policy. There's a link to the working group's webpage in today's show notes.

OTHER NEWS

CTCAC Placed-In-Service Deadlines

Next, I have several important tax credit updates from California.

First of all, the California Tax Credit Allocation Committee last week granted a six-month extension of placed-in-service deadlines for low-income housing tax credit properties. The extensions are due to complications from the COVID-19 pandemic. The extensions apply to properties that received carryover allocations in 2018 and 2019.

The authority to delay the deadlines comes from Treasury Notice 2014-49, which grants that authority due to the declaration of a major disaster area and obviously every state was declared a major disaster area due to COVID-19.

California Disaster LIHTC Allocations

TCAC also recently announced some details of how the committee will allocate $1 billion in federal disaster low-income housing tax credits. California received those 9 percent credits as relief after catastrophic wildfires in 2017 and 2018. The additional credits were allocated to the state as part of federal budget legislation signed by President Trump at the end of 2019.

The California allocation plan grants a minimum of $25 million in credits to each of the 13 counties affected by the wildfires.

The rest of the credits will be apportioned based on the county's percentage of the statewide loss of homes. Butte County, where 59 percent of the homes that were lost were located, will get more than $400 million in credits. I should say Butte County is eligible for that much in credits.

The state said there will be up to three application rounds for the additional credits. The first round has a deadline of July 1, just over a week from now. The second deadline is early March 2021. Any remaining credits will be awarded in a round that has a deadline of early July 2021.

If, for instance, Butte County falls short of applying for and receiving $400 million in credits, the remaining credits will be apportioned to other disaster areas in that third round.

Any property receiving the disaster credits is eligible for the 130 percent basis boost, regardless of whether it is in a difficult development area or qualified census tract.

Properties that get the federal disaster credits are not eligible for state credits. I do have an important distinction here: The disaster allocation round is a separate competition with different selection criteria from the regular 9 percent competition. However, projects that are not awarded disaster credits are eligible to compete in the concurrent regular 9 percent round. That is assuming they satisfy the requirements of the regular 9 percent competition.

The state said applicants should use the same form for the disaster credits and regular credits. With such little time until the first round of applications are due, check with my partners Jim Kroger or Thomas Stagg to discuss your potential developments for this round or future round.

California Historic Tax Credit

Before I close, I have a short update on the California state historic tax credit.

The state historic tax credit was enacted this past October, making California one of the more than 35 states with a historic tax credit incentive. However, no funding information for the program is available yet. It actually hasn't been funded by the state budget yet. And no application for the credit or regulations are available yet, either.

Novogradac did hear from the state historic preservation office last week that the office is discussing beginning the rulemaking process.

I will share updates on the California historic tax credit as they become available. I don't expect them to be in the state budget, so it looks like we may have to wait another year before we actually have a state historic tax credit available in California.

In the meantime, I encourage you to contact Novogradac's historic tax credit team to learn more about historic preservation incentives available in your state.

Related Resources

Moving Forward Act Infrastructure Proposal

Moving Forward Framework

White House Opportunity and Revitalization Council Report

Opportunity Zones Best Practices Report to the President

Urban Institute Opportunity Zones Report

Urban Institute Report: An Early Assessment of Opportunity Zones for Equitable Development Projects

Opportunity Zones Virtual Conference

OZ 101: The Basics, June 30

OZ 201: Overcoming Obstacles, July 7

California TCAC Extension

Placed in Service Deadline Extensions for COVID-19 Disaster Declaration

California LIHTC Disaster Credits

Press Release: California Rebuilds Housing in Wake of Wildfires

Renewable Energy Relief Policies

IRS Notice 2020-41

Letter to House Leaders on Clean Energy Economic Relief

Email Tony Grappone

Register for the RETC State of the Industry Webinar

Novogradac RETC Working Group

Paycheck Protection Program Application

Email Megan Murphy