NOVOGRADAC
TAX CREDIT TUESDAY
PODCAST

Summary: July 2, 2019

In this week's Tax Credit Tuesday Podcast, Michael J. Novogradac, CPA, talks about a new White House council to address affordable housing barriers. Then he outlines a bill designed to apply on a retroactive basis to low-income housing tax credit properties, in an effort to mitigate the removal of rent restrictions. After that, he discusses bipartisan legislation to authorize an additional $500 million in new markets tax credit allocation authority annually for certain rural communities in 2019 and 2020. He then shares cosponsor updates on legislation to make the new markets tax credit permanent, as well as news about opportunity zones and opportunity funds. After that, he has updates on several items, including the state of the nation's housing, the Capital Magnet Fund, a renewable energy bill and news from several states on opportunity zones, low-income housing tax credits and new markets tax credits.

Summaries of each topic:

GENERAL NEWS

White House Council Created to Reduce Affordable Housing Development Barriers

- President Donald Trump last Tuesday signed an executive order to create a White House council to address barriers to affordable housing development.
- The group will include members from eight federal agencies and will be led by HUD Secretary Ben Carson.
- Now the council was formed to measure how federal, state and local regulations affect affordable housing.
- The ultimate goal is to reduce regulatory barriers that hinder affordable housing development.
- Now the executive order said that more than 25 percent of the cost of a new home is due to federal, state and local regulations.
- Now I'll share updates on the council's progress in future podcasts as more information becomes available.

Save Affordable Housing Act of 2019

- Staying on the topic of housing, legislation was introduced in the Senate and the House last week that would modify the qualified contract option for the federal low-income housing tax credit (LIHTC) for existing properties.
- That's right, it would modify the qualified contract option for existing properties on a retroactive basis, as well as eliminate the option for future LIHTC transactions.
- Now what would this mean for the LIHTC community?
- Well, let's start with a step back.
- As you know, the LIHTC generally requires properties to remain affordable for at least 30 years.
    - Those 30 years include the initial 15-year compliance period and generally an additional 15-year extended-use period that's enforced by state allocating agencies.
    - Now sometimes state allocating agencies have even longer extended-use periods, like California, which goes 55 years.
- Now the main point here is that LIHTC properties must generally remain affordable for at least 30 years.
- There are though, two exceptions.
- The first exception is a foreclosure.
- The second exception is the qualified contract process.
- Now under that process, after Year 14 of the compliance period, current law allows a tax credit property owner, in general, to request a qualified contract from the appropriate state allocating agency.
- Now the state agency then has one year to find a qualified buyer to purchase the property and maintain the property as affordable for the remainder of the extended-use period.
- Now the qualified contract price is set by statute in Section 42.

- I should note, and this is important, many states, such as California, don't allow this exception.
- Now in many cases, the statutory formula that's used for determining qualified contract price is greater than the fair market value for the property.
- As such, it's difficult to find a buyer.
- If no buyer is found, then the owner can choose to terminate the affordability requirements for the property.
- Now in other words, the qualified contract option allows owners of many affordable housing properties to eliminate the rent restrictions and income restrictions after 15 years.
- Now this legislation that was recently introduced, would eliminate that option for future recipients of LIHTCs, as well as modify the rule for existing owners.
- In short, the legislation, in part, is designed to apply on a retroactive basis.
- Now as noted earlier, many states already have provisions in their qualified allocation plans that require applicants to waive their rights to the qualified contract option.
- More specifically, this retroactive change would not affect properties in California and another 22 states
- Well, how prevalent is this issue of losing rent and income restrictions because of qualified contracts?
- The National Council for State Housing Agencies, or NCSHA, posted a report on its website indicating that recently, 10,000 low-income units a year are losing their LIHTC rent and income restrictions because of the qualified contract process.
- Many of these units are tax-exempt bond financed units, I should note.
    - In fact, as of 2017, about 50,000 affordable housing units lost their tax credit rent and income restrictions according to NCSHA.
- Now the bill, The Save Affordable Housing Act of 2019, seeks to limit the number of properties that are losing their rent and income restrictions by eliminating the qualified contract option for future properties and retroactively changing the statutory formula for existing properties.
- Now lead sponsors of the Senate version of the bill (S. 1956) are all members of the tax-writing Senate Finance Committee.
- The Senate bill's original cosponsors are:
    - Senate Finance Committee Ranking Member Ron Wyden of Oregon,
    - Republican Sen. Todd Young of Indiana,
    - Democratic Sen. Ben Cardin of Maryland and
    - Democratic Sen. Sherrod Brown of Ohio.
- Now other co-sponsors include:
    - Democrats Michael Bennett of Colorado and Maria Cantwell of Washington.
    - As you know, Sen. Cantwell is a leading champion of the LIHTC and is the lead sponsor of the Affordable Housing Credit Improvement Act.
    - And Sen. Young is one of the lead Republicans on that legislation.
- Lead sponsors of the House bill (H.R. 3479) are:
    - Democrat Joe Neguse of Colorado,
    - Republican Jackie Walorski of Indiana and
    - Democrat Don Beyer of Virginia.
    - Now Reps. Walorski and Beyer are also lead House sponsors of the Affordable Housing Credit Improvement Act.

- I'll keep you posted on the status of the bill in future podcasts.
- In the meantime, contact a Novogradac partner near you if you have questions about the qualified contract process

Rural Jobs Act

- In other legislative news, bills were introduced in both the House and Senate Thursday to drive private investment into rural communities.
  - Now the goal is to create rural jobs and opportunities in underserved areas.
- The Rural Jobs Act would authorize an additional $500 million in new markets tax credits (NMTCs) for certain rural areas in both 2019 and 2020.
- This additional allocation would specifically target what are called rural job zones.
  - Rural job zones are low-income communities that have 50,000 residents or fewer and are not adjacent to an urban area.
- Now under the legislation, at least 25 percent of the new allocation authority would be prioritized for persistent poverty counties and high-migration counties.
- Now this bill to expand the NMTC is bipartisan and bicameral.
- Lead House sponsors of the Rural Jobs Act are:
  - Rep. Terri Sewell, she's a Democrat from Alabama, and
  - Rep. Jason Smith, a Republican from Missouri.
  - Now Sewell, you may recall, is also the lead sponsor of the New Markets Tax Credit Extension Act, and Smith is one of the lead Republican cosponsors along with Rep. Tom Reed of New York.
- Now In the Senate, the lead sponsors are
  - Democrat Mark Warner of Virginia,
  - Republican Roger Wicker of Mississippi, as well as
  - Republican Shelley Moore Capito of West Virginia and
  - Democrat Ben Cardin of Maryland.
  - Now Cardin is the lead Democratic cosponsor of the New Markets Tax Credit Extension Act, and Wicker and Capito are cosponsors.
- See today's show notes for links to the press releases and bill text for both bills.

New Markets Tax Credit Extension Act of 2019

- And speaking of NMTC legislation, I do want to also share cosponsor updates on the New Markets Tax Credit Extension Act of 2019.
- As you'll recall, this bipartisan legislation was introduced in the House and the Senate in March.
- The bill would:
  - make the NMTC permanent, as well as
  - provide an inflation adjustment to the limitation amount for the credit and
  - would allow an offset against the alternative minimum tax for the credit.
- Now support for the legislation has grown to 25 cosponsors in the Senate, including 15 Democrats and 10 Republicans.
- Six of those 25 Senate cosponsors signed on in support of the bill in June.
- Now the House version of the bill is also gaining traction.
- In June, 16 new cosponsors signed the House bill.

- That gives the House legislation 90 total cosponsors, with 48 Republicans and 42 Democrats.
- And as we've discussed in previous podcasts, components of the New Markets Tax Credit Extension Act would more likely be included as part of a larger must-pass package, as opposed to passing as stand-alone legislation.
- I'll talk more in next week's podcast about the status of certain must-pass legislation and potential vehicles for tax extenders.

OZ Working Group Letter

- Monday was another important day for the opportunity zones incentive.
- It was the day that comments to the Treasury Department were due on the second tranche of proposed regulations that were issued in April.
- Our Opportunity Zones Working Group did submit a letter to Treasury with the group's thoughts on the regulations.
    - Now the letter included comments on more than 25 areas that were covered in April, and even last October's regulations.
        - In total, it's roughly 52 pages.
- Now the areas included five major categories:
    - Investor issues,
    - qualified opportunity funds issues,
    - qualified opportunity zone businesses definitional questions, as well as
    - the determination of qualified opportunity zones business property, and
    - the ability of taxpayers to rely on the 10-year hold rules in the regulations.
- Now the Working Group does include a variety of opportunity zones stakeholders.
    - Many of our listeners are members.
- Now the next step here is a hearing about the proposed regulations.
- And that'll be next Tuesday just outside Washington, D.C.
    - They had to move from D.C. to an area just outside Washington, D.C., to get a larger room.
- Now my partner John Sciarretti is expected to be testifying at the hearing on our working group comment letter.
- Look for a breaking news email that will be coming out soon where you can access our comment letter.

OZ Funds Survey

- And in other opportunity zones news, Novogradac recently surveyed managers of funds that are listed on the Novogradac website's Opportunity Funds listing.
- These results were quite enlightening.
- Now the fund listing has 136 or so funds.
- But at the time the survey was taken, we had only received responses from about 40 funds, and that was through May.
- Now the amounts they had raised was quite substantial.
- $790 million among those 40 funds.
- Our results also showed that 79 percent of the funds intended to invest in housing.

  - Now I should note that participants could pick more than one area in which they intended to invest, so many of those funds, the 79 percent intending to invest in housing, will also be investing in other businesses.
- Now we're going to have an article in the July issue of the Novogradac Journal of Tax Credits that discusses these results and I've written a blog post about them, which is included in today's show notes.
- Now I should also note that we're going to conduct another survey this month.
- And you may remember that June 28, last Friday, was the deadline to meet the 180-day reinvestment requirement for 2018 partnership capital gains.
- Because of that, we expect there will be a significant jump in the amount of capital invested in funds in June, leading to a significant jump in the number of funds that have raised substantial capital that are on our list.

Other News

- Let’s turn now to other news, and we have a lot of other news briefs.
- First, the Joint Center for Housing Studies at Harvard University last week released its annual report on the state of the nation’s housing.
    - The Harvard report indicated a slight drop in the percentage of cost-burdened renters.
        - That term applies to those spending more than 30 percent of their income on rent.
        - However, nearly half of renters remain cost-burdened.
    - As it does each year, the report also examines the role of incentives including the LIHTC in addressing the nation’s housing needs.
    - Now there’s a link to the report in today’s show notes.
- Now in community development news, the CDFI Fund announced the opening of the funding round for the fiscal year 2019 Capital Magnet Fund.
    - As you know, the Capital Magnet Fund makes awards to help finance affordable housing activities, related economic development and community services facilities.
    - This year there’s a little more than $130 million available.
    - There is a link to application information in today’s show notes.
    - And if you would like help with your application, please contact a Novogradac partner near you.
- Now turning to historic preservation news, the Advisory Council on Historic Preservation will have its quarterly meeting <u>next</u> Wednesday at 8:30 a.m.
    - That’s Wednesday, July 10.
    - The meeting is at the Smithsonian Castle Visitor Center in Washington, D.C., and there is a link to the agenda is included in today’s show notes.
    - The council advises the president and Congress on matters related to historic preservation.
    - The meeting is open to the public.
- Next, I have two bits of renewable energy news.
- The first is about a bill that was introduced last week to extend the investment tax credit (ITC) through the year 2025 for offshore wind.
    - The bill is called the Offshore WIND Act and applies <u>only</u> to offshore wind.
    - As you may know, the ITC is phasing down and will be at 10 percent beginning in the year 2022.
    - The Offshore WIND Act would keep the credit at 30 percent for offshore wind developments.
- And also, the Court of Federal Claims released opinions siding with the government in lawsuits over developer fees in the Section 1603 cash grant program.
    - Both cases used the same reasoning, that the Treasury Department was correct in allowing just a portion of the cash grant for developer fees and not covering all the development fees.
    - As you know, the Section 1603 program was a cash grant program enacted during the Great Recession to increase investment in renewable energy.

- While these court decisions are specific to the Section 1603 grant program, they could have implications for how taxpayers claim developer fees as part of the renewable energy ITC.
- Now moving to more opportunity zones news, the IRS last week added two census tracts in Puerto Rico to the list of federal opportunity zones.
    - Both census tracts were <u>ineligible</u> under the initial American Community Survey data that was used, but are <u>now</u> eligible.
    - Puerto Rico has an exception to the rules, as you may know, governing opportunity zones.
    - While other states and territories can have 25 percent of their low-income communities designated as opportunity zones, <u>any</u> low-income community in Puerto Rico is eligible.
- We also have opportunity zones news from Louisiana.
- Louisiana Gov. John Bel Edwards signed a bill that makes opportunity zones property eligible for an abatement from property taxes.
    - The bill adds opportunity zones to the list of other areas eligible for that benefit.
    - Now this abatement is for up to 10 years.
    - And to be eligible a structure has to be expanded, restored, improved or developed.
- And elsewhere, a bill in Massachusetts would give gateway cities priority in receiving technical assistance from the state in promoting or marketing their opportunity zones.
    - Gateway cities are midsized urban centers that anchor regional economies.
    - There are specific qualifications to be considered a gateway city.
- And a West Virginia bill that we've discussed in a previous podcast passed the state Senate.
    - The legislation would allow individuals, partnerships or limited liability companies to exempt certain income earned by opportunity zone businesses from state income tax liability.
    - The bill is now with Gov. Jim Justice, who vetoed a similar bill in March, but made some suggestions for changes.
    - Those changes were addressed and we're hopeful he'll be signing the bill.
- And we have big news from California.
- Gov. Gavin Newsom last week signed a budget bill that includes a $500 million increase in the state LIHTC.
    - That's right, a <u>$500 million increase</u>.
    - The state previously had about $90 million in annual allocation, so this is a very large boost.
    - Affordable housing is a significant issue in California, like it is in the rest of the nation.
    - The increase in California primarily will be allocated in 4 percent tax credits for new construction, since that is an underused tool for affordable housing, and there is affordable housing tax-exempt bond cap available.
- Now in other community development news, Kentucky announced that $5 million worth of state NMTCs will be available July 15.
    - We've included a link to the announcement in today's show notes.

RELATED RESOURCES

Novogradac 2020 Affordable Housing Conference: Using RAD and the LIHTC to Improve Communities

Register

White House Affordable Housing Council

Executive order

Save Affordable Housing Act of 2019

Save Affordable Housing Act of 2019 (S. 1956, H.R. 3479)

Press release from Rep. Joe Neguse on bill

Press Release from Senate Finance Committee on bill

Rural Jobs Act

Rural Jobs Act (H.R. 3538)

Press release from Rep. Terri Sewell on bill

Rural Jobs Act (S.2028)

Press release from Sen. Roger Wicker on bill

NMTC Extension Act

New Markets Tax Credit Extension Act of 2019 (H.R. 1860)

New Markets Tax Credit Extension Act of 2019 (S. 750)

Opportunity Funds Survey Results

Blog post: How Much Capital Have Opportunity Fund Managers Raised?

State of the Nation’s Housing

The State of the Nation’s Housing 2019

Capital Magnet Fund

CDFI Fund Opens FY 2019 Capital Magnet Fund Funding Round

ACHP Quarterly Meeting

Meeting notice

WIND Act

Offshore Wind Incentives for New Development (Offshore WIND Act)

Section 1603 Ruling

California Ridge Wind Energy LLC vs. United States opinion

Bishop Hill Energy LLC vs. United States opinion

Puerto Rico OZs

Notice 2019-42: Amplification of Notice 2018-48 to Include Additional Puerto Rico Designated Qualified Opportunity Zones

Louisiana OZ Bill

Louisiana Act 251: Adding OZs to areas eligible for tax abatement

Massachusetts OZ Bill

Massachusetts H.B. 3918: An Act relative to opportunity zones in gateway cities

West Virginia OZ Bill

West Virginia H.B. 113 to amend code for opportunity zones tax incentives

California Budget

California Governor Signs Budget that Includes $500 Million State LIHTC Boost

Kentucky NMTC

Kentucky new markets tax credit announcement