NOVOGRADAC TAX CREDIT TUESDAY PODCAST

Summary: August 04, 2020

In this week's Tax Credit Tuesday podcast, Michael J. Novogradac, CPA, discusses negotiations for the next round of COVID-19 relief legislation and the extension of the now-expired federal eviction moratorium and rental assistance. Then, he talks about coronavirus-related guidance from the IRS for the historic tax credit. Next, he discusses how the CDFI Fund plans to continue to handle COVID-19 relief guidance for the new markets tax credit. He also talks about presidential candidate Joe Biden's latest economic plan and what it says about the new markets tax credit and opportunity zones. He wraps up with a minibus appropriations bill for fiscal year 2021 passed in the House and news from HUD on how to access funding made available in the CARES Act earlier this year.

Summaries of each topic:

GENERAL NEWS

COVID-19 Relief

Talks continue in Congress over the next wave of legislation for COVID-19 relief.

As we mentioned last week, Senate Republicans introduced the HEALS Act. The HEALS Act is a $1 trillion proposal that includes a second round of direct payments to individuals and a second round of Paycheck Protection Program loans. Republican Senate leadership intended for the HEALS Act to be the starting point of negotiations with congressional Democrats.

That said, it didn't take long for negotiations to bog down. Many Senate Republicans, the rank and file, were unhappy with the bill, with some Republicans considering the bill too expensive. The Senate adjourned last week without significant progress. Talks continued through the weekend and on Monday among White House negotiators and Democratic leaders in the House and Senate.

While there is strong disagreement on some issues, there is hope that once the most expensive issues are settled, an agreement could happen quickly. It doesn't appear that agreement will occur this week, as House Speaker Nancy Pelosi told Democrats Monday that she expects the talks to continue into next week. This is according to reporting from Roll Call. Many believe the true deadline for an agreement is 10 days from now, Aug. 14. Why August 14th you ask, well August 14th is the Friday before the Democratic National Convention.

To specifically address what community development provisions could be included in the final agreement, we can start with what Senate Republicans did and did not offer.

The HEALS Act did not offer any provisions related to the: Low-income housing tax credit, new markets tax credit, historic tax credit, renewable energy tax credits, or opportunity zones. The HEALS Act, did include about $3.3 billion in housing appropriations.

The HEROES Act, the Democratic version, did not have any of those community development tax provisions either. However, the HEROES Act did include $100 billion in emergency rental assistance and more than $24 billion in other HUD funding.

While COVID-19 relief legislation, both in the House and in the Senate, lacks community development tax provisions, that doesn't mean those provisions are off the table for this round of discussions and negotiations. Some provisions of the House-passed Moving Forward Act could find their way into COVID-19 relief legislation. The Moving Forward Act was passed by the House July 1. That bill included sweeping provisions for a broad range of community development tax incentives.

My Washington Wire column in the August issue of the Novogradac Journal of Tax Credits examines the Moving Forward Act. In the column, I look at what provisions could be included in other legislation this year, including this round of COVID-19 relief legislation. Among the provisions that could be included are: A permanent 4 percent low-income housing tax credit floor, permanence for the new markets tax credit, and more.

To highlight the potential for some of these housing provisions to be included in relief legislation, last Friday, a group of 104 members of the House signed a letter asking leadership to include affordable housing provisions in the next COVID-19 relief legislation. The letter sought four specific provisions, including a 4 percent minimum rate and a 50 percent increase in the annual allocation. Just as important as the letter, the signatories of the letter were bipartisan, showing that the provisions for affordable housing has broad support in the House.

We'll keep a close eye on negotiations and keep you updated on any community development tax incentive provisions that are included. Please follow me on Twitter for more immediate updates as we learn more about these discussions.

Now, let's consider something else that was not included in the HEALS Act.

That's the federal eviction moratorium, which expired July 24, 11 days ago. The eviction moratorium was part of the CARES Act that passed in March. The moratorium allowed residents to stay in their apartments, even if they didn't pay rent. This was intended to help renters who could not pay their rent due to the pandemic. Though no such causation was needed to avoid evictions. The eviction moratorium was a blanket moratorium covering all renters not paying rent for any reason.

Last week, before the HEALS Act was introduced in the Senate, White House economic advisor Larry Kudlow said the Trump administration would, quote, "lengthen" the federal eviction moratorium. But like I said, it has since expired.

Please note, while the federal eviction moratorium has expired, many states and local jurisdictions have extended their own moratorium. For instance, Florida Gov. Ron DeSantis last week extended his state's eviction moratorium until Sept. 1. In California, supervisors in Alameda County, which includes Oakland, extended the moratorium until at least Dec. 31. Philadelphia extended the eviction moratorium for renters in public housing properties in that city until March 15, 2021. And, there are more areas that have extended a moratorium.

The goal of keeping renters in their homes even if they are unable to pay rent due to COVID-19 is laudable. However, effecting this result solely through a moratorium on evictions leaves property owners suffering the economic cost of this federal, state and local policy. In short, the federal government and state and local governments, is guaranteeing housing for renters during the term of the moratorium, without reimbursing landlords for the economic cost of this guarantee.

To correct this, many believe that the eviction moratorium should be paired with rental assistance.

My partner Blair Kincer wrote a blog post about this need for rental assistance. Blair points out in the blog post that the additional $600 in unemployment benefits provided under the CARES Act made it possible for many tenants to pay rent. That benefit, as you likely have heard, ended Friday. Blair points out that the U.S. had a long-term shortage of affordable housing before COVID-19 hit. His blog post considers all the ways people are making rent and the ripple effects.

Blair makes the point that there are several ways that Congress can address this difficulty. Pairing extra rental assistance with an extension of the eviction moratorium is a logical solution. There's a link to Blair's blog post in today's show notes and I'll tweet out the link, too.

And I'll keep you updated in this podcast and on Twitter about developments in the COVID-19 legislation discussion.

HTC Guidance

Now, let's move to some guidance for historic tax credit properties.

The IRS last week published Notice 2020-58. The notice provides relief to taxpayers in satisfying the substantial rehabilitation test for historic tax credit properties. The relief applies to taxpayers that have a 24-month or 60-month measuring period that ends on or after April 1, 2020, and before March 31, 2021.

Under the guidance, those taxpayers now have until March 31, 2021, to satisfy the test the 24-month or 60-month measuring period test. The IRS guidance is most beneficial to taxpayers attempting to qualify under the transition rule that was provided in tax reform legislation in 2017. Taxpayers that originally had to satisfy the substantial rehabilitation test by June 20, 2020. They now have until March 31, 2021. Again, any deadline from April 1, 2020, through March 31, 2021, is now March 31, 2021.

This is helpful that guidance, but it could have been <u>more</u> helpful. The IRS could have issued guidance that was more helpful. That's because the guidance is somewhat limited. The IRS guidance merely covers taxpayers whose substantial rehabilitation test period <u>ends</u> in the one-year period of April 1, 2020, through March 31, 2021. Any property owner with an end <u>outside</u> of that period gets <u>no</u> extension.

Of course, COVID-19 does affect <u>all</u> the historic tax credit properties, whether or not their period ends in that 12-month period. For example, a property with a 24-month period that begins in 2019, would receive no extension.

So what could the IRS have done? My view is the IRS should have adopted the same rule they used for the 30-month substantial improvement period for opportunity zones. In that case, the IRS <u>suspended</u> the period of April 1 through Dec. 31 of this year. This means the nine-month period of April 1 to Dec. 31 is excluded in measuring the 30-month period.

In other words, <u>everyone</u> got a delay, a delay of up to nine months. Had the IRS adopted a similar approach for historic tax credit properties, and used their March 31, 2021, extension date, any property with a 24- or 60-month test that overlapped with the relief period would have seen some level of extension of their substantial rehabilitation test measuring period. An extension of up to 12 months. Meaning the 24-month would be up to 36 months and 60 months could be up to 72 months depending on the degree of overlap during the extension period.

Regardless of that and the fact that it could have been more expansive, this guidance is good news for developers who had to satisfy the test during that specific one-year period. If the guidance affects you–or even if you have another deadline and need some consultation on how to handle that–call my partner Tom Boccia in our Cleveland, Ohio, office. I'll provide his contact information in today's show notes.

CDFI Fund Guidance

The IRS wasn't the only federal organization that provided guidance for a tax incentive last week. The CDFI Fund did as well.

Last week on Wednesday, CDFI Fund director Jodie Harris released an update that summarizes the work the CDFI Fund is doing at this time. Most notably as it relates to new markets tax credits, the notice states that the CDFI Fund will continue to evaluate requests from CDFIs and program recipients impacted by the COVID-19 pandemic on a case-by-case basis.

Harris said the CDFI Fund doesn't want to make broad application and compliance changes too quickly. Instead, the CDFI Fund wants to take a long-term view of what organizations might need during the pandemic.

Unfortunately, this isn't the approach that the New Markets Tax Credit Working Group and other organizations have requested. In May, the New Markets Tax Credit Working Group sent a letter to the CDFI Fund, requesting guidance regarding issues resulting from COVID-19. The comment letter requested guidance for: A CDE's ability to comply with its allocation agreement, deadlines for authorized uses of a new markets tax credit allocation, reporting requirements, and more. These are issues that members of the working group felt needed guidance for all CDEs to use.

The working group will continue to communicate its requests for universal guidance and generally applicable guidance to the CDFI Fund. I'll include a link to the working group comment letter in today's show notes. Also, I invite you to join the New Markets Tax Credit Working Group to have your voice included in the next comment letter. I'll include a link to register for the working group in today's show notes—I'll also tweet it out.

Also, another quick reminder that the CDFI Fund is expected to open the 2020 NMTC round later this summer or early fall. If you need assistance with a new markets tax credit application, contact a Novogradac office near you. I encourage you to contact us sooner than later because the application opening and deadline will be here before you know it, and there's a lot of advanced planning you'll want to consider in order to submit a quality application.

Biden Economic Plan

Now, I'd like to turn to an economic plan announced last week by Democratic presidential candidate Joe Biden.

The Biden plan addressed racial inequality and economic recovery. The plan was the fourth plank in his so-called "Build Back Better" economic platform. The former vice president addressed several issues, including a small business opportunity plan and infrastructure.

Biden also addressed the new markets tax credit and opportunity zones. Biden's plan calls to make the new markets tax credit permanent with a $5 billion annual allocation. Biden has previously called for permanence, most recently as part of policy recommendations from a unity task force with Sen. Bernie Sanders. The task force's policy recommendations were released July 8.

Concerning opportunity zones, Biden expressed confidence in the potential of opportunity zones. Biden's plan didn't provide a lot of details, but he did include three points about opportunity zones.

First, the plans says that he would incentivize qualified opportunity funds to partner with nonprofit or community-oriented organizations and produce a community benefit plan for each investment.

Second, he would direct that opportunity zones benefits be reviewed by Treasury to ensure that tax benefits are being allowed only where there are clear benefits to the community.

Third, the plan would require opportunity zones investors to provide detailed reporting and public disclosure on opportunity zones investments.

The election is still three months away, but we're pleased to see that a Biden administration would embrace the potential of opportunity zones. The plan suggests a Biden administration would work to make opportunity zones even more effective. The idea of incentivizing partnerships with nonprofit and community-oriented organizations fits with the general principles of opportunity zones.

Also, there is already bipartisan, bicameral support in Congress for reporting legislation. It's good news that Biden would push for passage. Most opportunity zones stakeholders do hope that there will be reporting legislation approved this year, which would be before Biden could even take office.

As you certainly know, President Trump has been a frequent cheerleader for opportunity zones. That both major candidates for president embrace the potential of opportunity zones is a good sign for stakeholders. I'll update you if the Biden or Trump campaigns make any further statements concerning the incentive.

OTHER NEWS

In other news, the House of Representatives passed a so-called “minibus” appropriations bill for fiscal year 2021 last Friday.

The bill includes funding for HUD and the CDFI Fund. The legislation provides $50.6 billion for HUD, which is an increase of $1.5 billion above the enacted level for fiscal year 2020. The CDFI Fund would receive $273.5 million, which would also be more than the 2020 fiscal year funding level. The bill now goes to the Senate.

Also last week, HUD released notices with details on how to access funding that was made available in the CARES Act earlier this year. First, PIH Notice 2020-17 addresses housing assistance payment funding for the housing choice voucher program, and PIH Notice 2020-18 addresses additional administrative fee funding. I’ll include links to both notices in today’s show notes.

Related Resources

COVID-19 Relief Legislation

Washington Wire: Expansion of Community Development Tax Credits Included in Infrastructure Bill

Blog post: Renter Households will Need Assistance Long After the Pandemic is Brought under Control

Letter from 103 members of the House to Leadership Asking for Affordable Housing Provisions in next COVID-19 Relief Bill

Historic Tax Credit Guidance

IRS Notice 2020-58

Contact Tom Boccia

CDFI Fund Guidance

Message from Director Jodie Harris

New Markets Tax Credit Working Group Letter to CDFI Fund

How to become a Member of the New Markets Tax Credit Working Group

Joe Biden Economic Plan

Biden Plan to Build Back Better

HUD Notices for HCV Funding

PIH Notice 2020-17

PIH Notice 2020-18

Novogradac Online LIHTC Property Compliance Workshop

Registration