



In this week's Tax Credit Tuesday Podcast, Michael J. Novogradac, CPA, discusses the intentions of certain Republican Senate Finance Committee members to advance tax reform technical corrections and to encourage Treasury guidance on some of the new tax law changes. Then, he moves on to housing, where he talks about a recent fair housing ruling and a new bill to promote housing affordability, the Housing, Opportunity, Mobility and Equity Act of 2018. He wraps up today's podcast with discussion of 2019 difficult-to-develop areas and information about the Capital Magnet Fund.

Summaries of each topic:

1. General News (01:47-11:10) Pages 2 – 5
 - a. Tax Reform Technical Corrections (01:47-05:45)
 - b. AFFH Rule (05:46-09:47)
 - c. Housing, Opportunity, Mobility and Equity Act of 2018 (09:48-11:10)
2. Other News (11:11-13:46) Page 6
3. Related Resources Page 7

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GENERAL NEWS

Tax Reform Technical Corrections

- Now, let's start with tax reform technical corrections.
- Senate Finance Committee Republicans are continuing to review the new tax law.
- And that review has a goal of identifying areas that may need regulatory guidance or need technical corrections legislation to pass Congress.
- And to that end, Finance Committee Republicans sent a letter to the Treasury and the IRS last Wednesday.
- The letter was designed to ensure that any guidance issued by Treasury and the IRS related to the new tax law would reflect Congressional intent in passing the legislation last year.
- Senate Finance Committee Chairman Orrin Hatch spearheaded the letter, along with 13 Republican committee members that joined him in signing the letter.
- Now the signatories said that they plan to introduce technical corrections legislation to address those items identified in their ongoing tax law review.
- In the meantime, the Finance Committee Republicans called on Treasury and the IRS to issue guidance on a few specific areas of the new tax law.
- Two of those I want to discuss here.
- One area relates to depreciation rules for real property.
- The letter states what most everyone already knew, and that is that Congress intended to provide a 15-year modified accelerated cost recovery period and a 20-year alternative depreciation system recovery period for qualified improvement property, or QIP.
- Now unfortunately, due to a drafting error, the tax bill as enacted provides a 39-year life for qualified improvement property.
- Now another area that calls for guidance relates to rules governing the deduction of net operating losses.
- The congressional intent was to provide that the net operating losses carryforward and carryback modifications would be effective for net operating losses that arise in taxable years beginning after Dec. 31, 2017.
- The emphasis is, the intent was for it to apply to tax years **beginning** after December 31, 2017.
- However, the word beginning didn't make its way into the law.
- Unfortunately, the tax law, as enacted applies to tax years **ending** after Dec. 31, 2017
- So, that's another item that the Finance Committee Republicans want to see corrected in a technical corrections bill.
- Now again, these are just a couple of provisions that Finance Committee Republicans say regulatory guidance or technical corrections is needed.
- Now the need for these technical corrections is significant to the affordable housing and community development communities.
 - Though, not that directly.
- The need for these technical corrections means that a tax bill will need to pass Congress that contains these fixes, and such a bill would most likely be considered in a lame duck session of Congress at the end of this year.
- And of importance to the affordable housing and community development communities, as well as historic preservation and other communities, such a bill could be a vehicle for passage of other tax matters.



- For instance, it could be a vehicle to extend the new markets tax credit (NMTC).
- It could also be a bill that carries certain provisions from the affordable housing credit improvement act, such as a 4 percent floor on the low-income housing tax credit (LIHTC) percentage, the percentage used for acquisition costs and projects financed with private activity bonds.
- Such a bill could also be a vehicle for eliminating the basis adjustment for historic tax credits (HTCs).
- And finally, it could also be a bill to carry certain renewable energy provisions, particularly certain extensions of expired renewable energy incentives.
- Furthermore, to the extent that more technical corrections are needed as they're identified, there's a greater chance that such a bill would be considered by Congress, and a greater chance that such a bill would pass.

AFFH Rule

- Now let's switch to the topic of housing, or at least focus more directly on housing.
- I have news that affects everyone who works with HUD funding.
- The Trump administration last week said it's moving to streamline the affirmatively furthering fair housing rule that was enacted in 2015.
 - HUD published an advanced notice of proposed rulemaking, seeking comments on amendments to its affirmatively furthering fair housing, or AFFH, regulations.
 - The notice called for a new approach to AFFH regulations and sought comments to help do so.
 - The AFFH regulations were instituted by the Obama administration three years ago.
 - Those regulations were an attempt to follow the requirements of the Fair Housing Act.
 - The purpose of AFFH is for communities that receive HUD funds to actively promote integration based on protected-class status.
 - The rule required jurisdictions that receive HUD funding to assess fair housing and identify solutions to discriminatory barriers in their markets.
 - The current administration has been critical of the regulation.
 - HUD Secretary Ben Carson and others say that the rule increases the burden on communities.
 - In a press release last week, Carson said that the rule, and I quote, "often dictated unworkable requirements and actually impeded the development and rehabilitation of affordable housing," end quote.
- This is the latest in a series of related moves by HUD concerning the AFFH rule.
- Now in January, the agency suspended the obligation of local governments to file plans under the rule.
 - HUD extended the deadline for the next submission until its first assessment of fair housing deadline after Oct. 31, 2020.
- Now four months later, a group of fair housing advocates filed a lawsuit against HUD in federal court.
- Now that was a filing, a lawsuit, that a federal judge dismissed last Friday.
 - The lawsuit said that HUD's suspension of the obligation for local governments was unlawful, because it violated the Administrative Procedure Act, or so the lawsuit asserted.



- That act sets the requirements to adopt and modify federal regulations.
- Part of the requirement for modification is an advanced notice of proposed rulemaking or the opportunity to comment on proposed modifications.
- A couple weeks after the lawsuit was filed, HUD published two notices.
 - The first withdrew the January notice.
 - But the second withdrew HUD's assessment tools to assess fair housing.
 - HUD said that there are significant deficiencies in the tool.
 - Now supporters of the AFFH rule say the decision to withdraw the tools effectively gutted the regulations.
 - HUD's reply was that most submitters couldn't produce an acceptable assessment because of the tool.
- Then came last week's notice.
 - That notice seeks comments on several areas to help shape a future rule.
 - Now there are eight questions that dealt with specific issues.
 - Those issues include:
 - What type of community participation and consultation should program participants undertake in fulfilling their affirmatively furthering fair housing obligations.
 - Also, how important should data collection and analysis be.
 - Also, how public housing agencies should report their fair housing plans and progress.
 - Obviously there are many more questions.
 - Now HUD seeks comments for 60 days after the notice was published.
- Now again, this issue does effect anyone who receives HUD funding.
- So, if you are involved with a public agency or you receive community development block grant funding or HOME funds, then the AFFH rule applies to you.
- Now I've shared a link to the notice in today's show notes.
- Please email us at cpas@novoco.com with any comments or suggestions you have.

Housing, Opportunity, Mobility and Equity Act of 2018

- Staying on the topic of affordable housing, Democratic Sen. Cory Booker of New Jersey recently introduced a bill meant to increase housing opportunity and affordability.
- Now on the affordability front, the bill provides a refundable tax credit for renters who spend more than 30 percent of their income on rent.
- Now this refundable tax credit would be very, very expensive and isn't expected to progress through Congress.
- Now another portion of the bill that does have better legs, a better chance of progressing through Congress, is a requirement that recipients of Community Development Block Grant funding, or CDBG funding, that they develop a strategy to support new inclusive zoning policies, programs and initiatives that would create more affordable housing.
 - CDBG recipients would be required to include in their annual performance reports the progress of those affordable housing strategies.
- The legislation also suggests ways to increase the supply of affordable housing.
- Such as:
 - Authorize high-density and multifamily zoning,
 - Establish density bonuses, and



- Change height and lot size requirements.
 - There's also other suggestions as well.
- Now the bill is called the Housing, Opportunity, Mobility and Equity Act of 2018, or S. 3342.
- I'll Tweet a link to the bill.



OTHER NEWS

- In other news, there's a new Notes from Novogradac blog post that predicts difficult to develop areas, or DDAs, for 2019.
 - Now this is based upon data that we know as of today and is subject to variation.
 - But it is a useful starting point and it's useful for planning for affordable housing developers.
 - Now Novogradac's analysis projects that non-metro DDAs will have great variability in 2019.
 - Nearly 25 percent of non-metro DDAs in 2018 will likely not be DDAs in 2019.
 - That's right, nearly 25 percent.
 - You can visit the Notes from Novogradac blog for more information.
 - And I've included the post link in today's show notes.
 - I also Tweeted out a link this morning to this blog post.
 - Once again, it's a Notes from Novogradac blog post that predicts DDAs during the year 2019, next year.
- And in community development news, the CDFI Fund is reminding prospective applicants of the Capital Magnet Fund's 2018 round that they'll be facing a few upcoming deadlines.
 - Now one of those deadlines has already passed.
 - That was a deadline to apply online for the SF-424 grant.
 - That deadline was Monday night.
 - But the deadline to create an organizational account through the CDFI Fund's awards management information system, or AMIS, is this coming Monday, Aug. 27, at 11:59 p.m. Eastern time.
 - And the deadline to submit your application and all attachments is Sept. 17 at 5 p.m. Eastern time.
- And if you need assistance with such an application, please reach out to the Novogradac partner near you, or reach out to Bob Ibanez in our Jacksonville, Fla., office.
- In related news, the CDFI Fund is looking for people who have expertise in affordable housing finance or development to serve as application reviewers for the Capital Magnet Fund.
 - Now sought-after expertise areas include:
 - people with experience in underwriting, assessing or evaluating affordable housing and economic development projects that are financed or developed by CDFIs and nonprofit developers.
 - And then also people with experience in structuring and underwriting complex multifamily affordable housing transactions.
 - Now recruitment will be conducted on a rolling basis until Sept. 4 at 5 p.m. Eastern.
 - I've included the email address where you can indicate your interest in being a reviewer in today's show notes.



RELATED RESOURCES

Tax Reform Technical Corrections, Guidance

[GOP Senate Finance Committee Letter to Treasury](#)

Priority Guidance Plan

[Fourth-Quarter Update to 2017-2018 Priority Guidance Plan \(Aug. 17, 2018\)](#)

Affirmatively Furthering Fair Housing

[HUD Advanced Notice of Public Rulemaking: Affirmatively Furthering Fair Housing: Streamlining and Enhancements](#)

HOME Act of 2018

[Housing, Opportunity, Mobility and Equity Act of 2018](#)

Capital Magnet Fund

[Federal Register Notice: Applications for the FY 2018 Funding Round of the Capital Magnet Fund](#)

[Email for Potential Capital Magnet Fund Application Reviewers](#)