



In this week's Tax Credit Tuesday Podcast, Michael J. Novogradac, CPA, gives an update for the IRS priority guidance plan for 2019-2020. Then talks about Brian Montgomery's expected nomination for HUD Deputy Secretary, and shares an update on the fourth revision to the Rental Assistance Demonstration Program. Next he talks about opportunity zone news including anticipated opportunity zones regulations updates, a HUD-proposed opportunity zones certification form and funding granted by the Department of Education to help schools in opportunity zones. He then talks about the 2019 Novogradac Opportunity Zones Fall Conference, and the housing plans of two Democratic presidential candidates, Michael Bennet and Beto O'Rourke. He discusses HUD's shutdown contingency plan and the establishment of an expedited review process for relief requests from HUD requirements for public housing agencies in major disaster areas. He also talks about the Rural Housing Preservation Act of 2019. Finally, he shares two updates from the state of California on the state historic tax credit and final proposed regulations for the California state LIHTC.

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## **GENERAL NEWS**

### **IRS Priority Guidance Plan**

- The IRS last week released an update to its 2019-2020 priority guidance plan.
- The plan outlines tax guidance priorities for Treasury and the IRS for the period from July 1, 2019, through June 30, 2020.
  - The period July 1 through June 30 is the plan year for Treasury and IRS guidance.
- The priority guidance plan includes 203 guidance projects, including several issues that are priorities for our listeners and our Novogradac working groups.
- For example, the IRS plans to prioritize regulations and guidance under the low-income housing tax credit average income test.
- Other low-income housing tax credit guidance priorities relate to compliance monitoring regulations and an update to guidance for state housing credit agencies requesting unused credit authority through the national pool.
- The IRS also plans to issue guidance related to opportunity zones, private-activity bonds, new markets tax credit rules and amendments to the historic tax credit.
- I should note that the opportunity zones and low-income housing tax credit average income guidance is listed under the Tax Credits and Jobs Act category, which suggests a further expedited consideration.
- I invite you to consider joining, if you're not already a member, one or more of Novogradac's working groups.
- The working groups are a great way to participate in helping resolve technical and administrative issues for various tax incentives, as well as just staying current.
  - Working groups have monthly conference calls to discuss hot topics and work on action items.
  - The groups then submit their recommendations directly to the IRS and/or the appropriate agency.
- We have a LIHTC Working Group, Opportunity Zones Working Group, NMTC Working Group and a Renewable Energy Working Group.
- I'll include links to each working group's home page in today's show notes and tweet them out as well.

### **Brian Montgomery**

- In HUD news, President Donald Trump announced last week that he intends to nominate Brian Montgomery as HUD Deputy Secretary.
- Montgomery is currently deputy secretary in an acting capacity.
- He is also the assistant secretary for housing and the commissioner of the Federal Housing Administration.
- Montgomery was the Federal Housing Administration commissioner under the George W. Bush administration, as well, from the years 2005 to 2009.
- Montgomery also served in the White House in different capacities from 2001 to 2005.
- As the assistant secretary for housing, Montgomery oversees HUD's project-based Section 8 rental assistance program, among other duties.



- Once Montgomery is formally nominated, then his nomination will be sent to the Senate Banking Committee.
  - The Banking Committee will likely hold a hearing to consider his nomination sometime this fall.

### **RAD Revision**

- Staying on the topic of housing and HUD, last week HUD announced the posting of the fourth revision to the Rental Assistance Demonstration, or RAD, notice last week.
- RAD, of course, allows units that are financed by certain HUD funding streams, including public housing, to convert to Section 8.
  - This conversion process creates the opportunity to:
    - stabilize funding,
    - create access to private capital,
    - streamline HUD programs and
    - rehabilitate the nation's affordable housing stock.
- The current cap for RAD conversions is 455,000 units, which is about one-third of the number of public housing apartments in America.
  - The cap has been increased several times and it might again be increased.
- The program has undergone some changes over the years, which is why there have been revisions to the notice.
  - RAD was implemented initially through a notice in 2013 and the first revision, which was a technical correction, was posted in 2014.
  - The second revision was in 2015 and the third came in 2017.
  - And now we have one in 2019.
- The fourth revision of the RAD notice includes several significant changes to both the first component and the second component of RAD.
  - The first component covers public housing conversions; the second component covers other HUD programs.
- There are many changes in the revision, varying from eligibility requirements to compliance.
- In fact, the fourth revision of the notice is 310 pages long.
- There are several notable elements in this revision that I want to be sure to highlight.
  - Probably the most important, Section 202 properties with project-based rental assistance contracts can now convert to long-term Section 8 contracts through RAD.
    - Section 202, if you aren't familiar with the program, is for supportive housing for the elderly.
  - Also with this revision, public housing authorities can now join forces and share resources, which will allow smaller public housing agencies to participate on a broader scale.
  - With the limited time of this podcast, I only have time to mention four other notable changes:
    - First, Project-based rental assistance properties undergoing RAD conversions in opportunity zones can increase their rent up to \$100 per unit under certain situations.



- Second, public housing authorities, or PHAs, can use existing income certifications and won't need to re-certify tenants when the conversion is complete.
- Third, PHAs can now apply for portfolio awards by indicating the number of units they wish to convert without having to identify specific units or buildings and
- Fourth, RAD applications no longer require financing letters of intent.
- This revision reflects how RAD continues to adapt and evolve as more properties are converted.
- If you're a housing authority, property owner or other interested party, that's considering or in the midst of a RAD conversion and you have any questions, call my partner Rich Larsen in our Toms River, N.J., office.

### **Opportunity Zones News**

- Next, as I promised earlier, I have a slate of opportunity zones-related news to share.
- First, we expect Treasury to release updated opportunity zones regulations in the coming weeks.
  - We expect that the updated regulations will combine the first two tranches of regulations to clarify a number of remaining issues and perhaps include some changes and new provisions.
- There are a few steps before the regulations are released.
- Namely, Treasury must start by sending the updated regulations to the Office of Information and Regulatory Affairs, or OIRA.
  - Only after OIRA reviews and comments, can the regulations be released.
- So, what's the timeframe for this?
- If history is any indication, OIRA will take 30 plus days to review and comment.
- What this means timing wise is, if OIRA receives the regulations in the next week or so, the public release of the regulations may come before Thanksgiving.
- We're expecting the updated regulations to be largely final regulations, though it is quite possible, probably even likely, that some portion of the guidance will be released in proposed form.
- In which event, Treasury will be asking for public comment on such proposed regulations.
  - Yes, the Novogradac Opportunity Zones Working Group would be submitting such comments.
- In anticipation of the release of updated regulations, my partner John Sciarretti and I co-wrote a two-part blog post on 26 of the most important opportunity zones guidance issues we're tracking.
  - John, as you may know, is the head of Novogradac's Opportunity Zones Working Group.
  - The Opportunity Zones Working Group has been very active in making recommendations to Treasury.
- Some of the issues John and I are tracking include that are included in the blog are:
  - Corporate consolidated return rules,
  - Investing Section 1231 gains in a qualified opportunity fund,



- The various rules around post year-10 exits from a fund, and
  - Pairing opportunity zones investments with affordable rental housing.
- We also obviously have much more in the blog post.
- You can find the blog posts on the Notes from Novogradac blog.
  - A link is in today's show notes and I'll tweet it out as well.
- We expect the issues discussed in our blog post to be further analyzed, assessed and commented on and evaluated at our opportunity zones conference in Chicago next week.
- I'll have more about the conference in a bit.
- I did say that I have a lot of opportunity zones news to share.
- Many of our next opportunity zones updates tie into the Trump administration's efforts to encourage opportunity zones investments and to better align inter-agency efforts.
- HUD last week requested public comment on a proposed opportunity zones certification form.
  - HUD will use the form to collect data to determine preference points in certain competitive federal grants and technical assistance applications.
  - The information will help guide HUD through future grant awards and will inform HUD's strategy to maximize nonprofit and private sector investment in opportunity zones.
  - Comments on the form are due Dec. 9. (And yes, the Novogradac Opportunity Zones Working Group will be commenting.)
- HUD also announced last week \$112 million of funding for which there will be preference points for developments in opportunity zones.
- The funding is to expand the supply of permanent affordable housing for very-low-income people with disabilities.
  - Specifically, the funding is for two components of the Section 811 program, including supportive housing for persons with disabilities and project rental assistance.
  - The deadline to apply for funding is Feb. 10, 2020.
  - This is an example of the type of program that the opportunity zones certification form I just mentioned would be used.
- In other federal agency news, with an Opportunity Zones angle, the Department of Education announced that it would provide \$42.4 million in grants to help support school districts in their efforts to improve learning environments for students.
  - The grant program offers a multi-tiered system of support for school districts, including ones located in a qualified opportunity zone.
- As noted earlier, we're going to discuss these topics and more at our Novogradac Opportunity Zones Fall Conference next week in Chicago, Oct. 24-25, and we do have a basics day on the 23<sup>rd</sup>.
- We have a great lineup of speakers coming and joining us in Chicago to share valuable insights on the opportunity zones incentive and what we can expect as we close out 2019 and head into 2020.
- We have several esteemed speakers from the White House, from Treasury and HUD, including:
  - Scott Turner, executive director of the White House Opportunity and Revitalization Council,
  - Daniel Kowalski, counselor to the Treasury Secretary,



- And taking lead or running point on the Treasury regulations: Alfonso Costa Jr., HUD's deputy chief of staff,
- And Ja'Ron Smith, deputy assistant to the president for the White House Office of American Innovation.
- If you work in opportunity zones or are interested in learning more about them, you won't want to miss our conference next week.
- I'll include a registration link in today's show notes and tweet it out as well.

### **Democratic Candidates' Housing Plans**

- Turning to affordable housing news, Provisions of the Affordable Housing Credit Improvement Act have made their way into a housing plan by Democratic presidential candidate, Sen. Michael Bennet of Colorado.
- Specifically, Bennet's housing plan includes a call for a 50 percent increase in 9 percent low-income housing tax credits.
- Bennet also wants to
  - increase incentives to target vulnerable communities
  - prioritize developments that provide permanent affordability and
  - adjust the minimum low-income housing tax credit rate—although it doesn't specify what adjustments he proposes.
- Bennet's plan also calls for contributing \$400 billion to the Housing Trust Fund as well as adding \$30 billion to the Capital Magnet Fund over the next 10 years.
- Bennet was not the only Democratic presidential candidate or presidential hopeful to release a plan last week.
- Former House member Beto O'Rourke of Texas also released a housing plan.
- O'Rourke proposes that all new developments receiving a 9 percent low-income housing tax credit be required to remain permanently affordable, as opposed to being able to return to market rate after 15 or 30 years or longer.
- Similar to Bennet, O'Rourke proposes increasing funding to the National Housing Trust Fund and Capital Magnet Fund.
  - O'Rourke also calls for \$400 billion to the National Housing Trust Fund and \$60 billion to the Capital Magnet Fund over the next 10 years.
- O'Rourke would fully fund housing choice vouchers and double the funding of Community Development Block Grants to \$6 billion.
- As we draw closer to the presidential election next year, we can and do expect affordable housing to become an even great focus for campaigns, or at least an important focus.
- You can read more about how Democratic presidential candidates compare on affordable housing in a column that I wrote for the October issue of the Novogradac Journal of Tax Credits.
- I'll include a link to the column in today's show notes, and tweet it out as well.
- We will be updating the ratings provided in that column for the recent releases by Bennet and O'Rourke, and we look forward to updating the ratings again, if, or I should say hopefully when, the lower scoring candidates provide more concrete plans regarding affordable housing.



## HUD Shutdown Plan

- Let's stay on housing, but turn now back to HUD news.
- HUD unfortunately has had to spend time planning for an event that we all hope doesn't happen.
- That planning effort culminated in HUD's recently releasing a contingency plan for a possible lapse in appropriations.
- The plan was released Sept. 23, a week before a continuing resolution was set to expire.
- Since then, a new stopgap funding bill was enacted which will keep the government funded through Nov. 21.
  - That's five weeks from this Thursday.
- In the event of a shutdown, under the plan, HUD expects that about 1,200 of its 7,400 employees would be called in to work on an intermittent basis.
  - That's about 16 percent of HUD's staff that would be called into work during a potential shutdown.
- Most importantly for our listeners and the low-income households they serve, the HUD contingency plan would continue to operate the housing choice voucher program, public housing operating subsidies and multifamily assistance contracts.
  - That's at least as long as they have funding because HUD did say there is a risk of running out of funding during the lapsed period, if there is one.
- Among the several activities that would continue under a contingency plan is conducting closings of mixed-finance and Choice Neighborhoods transactions that demand an immediate response and where failure to meet a closing date would threaten the property.
  - HUD used the examples of potentially losing low-income housing tax credits, new markets tax credits and other critical financing commitments through a delay in closing.
- For listeners with pending Rental Assistance Demonstration or RAD transactions, HUD's contingency plan allows processing RAD closings that were scheduled before the shutdown or RAD conversions where failure to close would threaten the property.
- In general, a government shutdown will mean HUD will have a limited number of employees to answer emergency questions.
- If you have any planned closings with HUD, it would be a good idea to review HUD's contingency plan in case you need to make preparations for a potential shutdown.
  - A link to this is in today's show notes.



### Other News

- In other HUD news, HUD published a notice in the Federal Register last week creating an expedited process to review requests for relief from HUD requirements.
  - The notice is for public housing agencies in counties in presidentially declared major disaster areas.
  - HUD's notice includes:
    - which requirements may be waived,
    - which waived requirements may facilitate a PHA's or public housing agency's ability to participate in relief and recovery efforts, and
    - a checklist for PHAs to submit to take advantage of the waiver request.
  - The notice went into effect last Wednesday and a link to the notice is in today's show notes.
- And in federal housing legislation news, two senators reintroduced a bill to protect affordable rental assistance for households in rural areas.
  - You may know that USDA rural development rental assistance programs are critical resources for low-income households in rural areas.
  - Many USDA financed properties are projected to lose their affordability restrictions in the coming decades.
  - The Rural Housing Preservation Act of 2019 was introduced to preserve rural affordable rental housing.
  - The Rural Housing Preservation Act of 2019 would expand the Rural Development voucher program to cover tenants in properties with prepaid or maturing mortgages.
  - The bill would also direct Rural Development to align its policies with those of the low-income housing tax credit, which could help expand financing opportunities for rural, affordable housing.
- Turning to state-level news, California's income tax law will include a state historic tax credit beginning in 2021, with a notable catch, however.
  - For starters, California Gov. Gavin Newsom signed legislation last week that creates the credit.
  - The California historic tax credit will equal 20 percent of qualified rehabilitation expenditures, with an extra 5 percent for properties that meet certain qualifications.
    - One of which is affordable housing.
  - The state credit law includes an annual cap of \$50 million, with two set-asides.
    - There is a \$2 million set-aside for residences and an \$8 million set-aside for small projects.
      - That is, a small project is one with less than \$1 million in qualified rehabilitation expenditures.
  - I said the historic tax credit was created with a catch.
  - Well, a provision in California's historic credit law is that the state Legislature has to approve the expenditure each year in budget legislation.
  - Which means the state tax law statute provides the foundation for a California historic tax credit, but a future state legislature will need to authorize the funding.
- Also from California, the California Tax Credit Allocation Committee, CTAC, released its final proposed regulations for the state low-income housing tax credit.



- California, you'll remember, approved a \$500 million increase in California state low-income housing tax credits to pair with the federal tax-exempt bond tax credit in this year's budget legislation.
- The new regulations govern that allocation authority.
- There were 16 changes or clarifications from the original proposals.
- There were an additional eight emergency proposed regulation changes.
  - These are changes that weren't part of the original proposal issued in August.
- The California Tax Credit Allocation Committee will consider adopting the recommendations in two weeks on Oct. 28.
- I encourage you to contact my partner Jim Kroger in our Walnut Creek office if you have any questions regarding the proposed rules.



**RELATED RESOURCES**

**Supplemental Appropriations Act 2019**

[Supplemental Appropriations Act 2019 \(H.R. 2157\)](#)  
[House Appropriations Committee Press Release](#)

**Opportunity Zones Reporting Bill**

[S. 1344, to require the Secretary of the Treasury to collect data and issue a report on the opportunity zone tax incentives enacted by the 2017 tax reform legislation, and for other purposes.](#)

[H.R. 2593](#)

[Sen. Cory Booker OZ Reporting Bill Press Release](#)

[Rep. Ron Kind OZ Reporting Bill Press Release \(Includes Link to Bill\)](#)

**Clean Energy for America Act**

[Clean Energy for America Act](#)  
[Overview](#)  
[Section-by-Section Summary](#)

**LIHTC Compliance Monitoring Regulations**

[NCSHA Letter to IRS](#)  
[Amendments to the Low-Income Housing Credit Compliance-Monitoring Regulations](#)  
[Subscription link to Novogradac Journal of Tax Credits](#)

**HUD Proposed Rule for Housing Assistance**

[HUD proposed rule on immigration eligibility for housing assistance](#)

**HUD Over-Income Public Housing Notice**

[HUD Notice with Supplemental Information on Over-Income Public Housing](#)

**Freddie Mac Report**

[Freddie Mac report on Opportunity Zones](#)

**FHA Incentives for OZ Affordable Housing**

[Incentives for FHA Mortgage Insurance for Properties Located in Opportunity Zones](#)

**California Budget Request**

[Revised 2019-2020 Budget Request](#)

**Maine LIHTC Bill**

[Maine L.D. 1645 to create state low-income housing tax credit](#)

**Hawaii HTC Bill**

[Hawaii S.B. 1394 to create state historic tax credit](#)



**2019 Forbes Opportunity Zones Summit: Investing for Impact**  
[Conference Information Page](#)

**Novogradac 2019 Financing Renewable Energy Tax Credits Conference**  
[Register](#)