Provisions in the Build Back Better Act (BBBA) could have a major impact on the affordable housing world. Michael Novogradac, CPA, is joined by Novogradac director of public policy and government relations Peter Lawrence and Dirk Wallace, CPA, a partner at Novogradac, to discuss the legislation and what developers and other affordable housing stakeholders should be doing. They discuss the provisions concerning the 9% and 4% low-income housing tax credit, the impact on tax credit equity pricing, how states will handle the changes and what developers should be doing. They also discuss the right of first refusal and qualified contract provisions in the BBBA, a provision to encourage solar power for affordable housing, the introduction of the neighborhood homes tax credit and a big jump in funding for the U.S. Department of Housing and Urban Development.

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[00:00:10] **Michael Novogradac, CPA:** Hello, I'm Michael Novogradac. And this is Tax Credit Tuesday. This is the Tuesday, December 14th.

In this week's podcast, we're going to talk about the landmark Build Back Better legislation the House of Representatives passed in November and is now being considered by the Senate. The legislation includes more than $156 billion in housing and community development spending and more than $18 billion in affordable housing tax incentives.

If signed into law as currently written, the Build Back Better Act would represent the largest expansion of affordable housing, community development and clean energy tax incentives and spending ever in a single piece of legislation. Today's podcast will focus on the housing provisions in the Build Back Better Act and next week's podcast will focus on the $325 billion in clean energy tax incentive provisions of the bill.

Now, if you're a developer, investor, syndicator or anyone else involved in the affordable housing world today, this podcast is for you. We'll talk about key affordable housing provisions in the bill and we'll address what you should be doing now to be ready if to the Build Back Better Act becomes law. Now, if you're interested in specific financial details of the legislation, I will provide a link in the show notes to a series of blog posts that dive into the specifics. Today, we're going to be looking at the main provisions that affect housing and steps you can be taking now.

My two guests this week will provide insight on what the affordable housing provisions do and what you should be doing now to be ready now. The first guest is Peter Lawrence, Novogradac director of public policy and government relations. No one is more plugged into the affordable housing policy world than Peter. If you've attended our conferences or a regular listener of Tax Credit Tuesday, you've certainly seen or heard Peter share his expertise. At our recent conference in Las Vegas, Peter was the moderator for a panel that discussed the housing provisions of the Build Back Better Act. He's also a frequent guest of this podcast.

My other guest is Dirk Wallace, my partner out of our Dover Ohio office. Dirk leads the Novogradac Low-Income Housing Working Group and co-leads the Novogradac Neighborhood Homes Tax Credit Working Group. Dirk was on a podcast about that credit, the Neighborhood Homes Tax Credit, earlier this year in July. Today we're going to discuss its position as part of the Build Back Better Act in today's podcast. We'll start with an overview of the low-income housing tax code provisions, then we'll discuss the Neighborhood Homes Tax Credit and we're going to finish with some of the HUD funding provisions. Along the way, as I noted, we're going to discuss what you can do to prepare and strategize for these potentially game-changing provisions. We have a lot to cover, so if you're ready, let's get started.

So, Dirk and Peter, welcome back to Tax Credit Tuesday.

[00:03:17] **Dirk Wallace, CPA:** Thanks, Mike.

[00:03:18] **Peter Lawrence:** Thanks, Mike, always appreciate the opportunity.

[00:03:21] **Michael Novogradac, CPA:** We always appreciate you joining. I know our guests look forward to podcasts that have one or both of you as guests, so today it's a double benefit. So we're going to start today's discussion. As I noted with the law, the tax credit provisions in the Build Back Better Act. Now the legislation includes a significant increase in the annual allocation of the amount of 9% low-income housing tax credits. Peter, if you could explain the increase for our listeners and then focus on the Senate bill, since it is different, slightly from the house.

[00:03:54] **Peter Lawrence:** Thank you, Mike. And, certainly, the 9% allocation increases are something we have been pursuing for a few number of years and we are making great progress, in providing an increased 9% allocations to address the incredible need for affordable rental housing out in the country. On Nov. 19, the House did pass the Build Back Better Act with a 9% allocation increase and just over the past weekend, the Senate bill came out, which provides inflation increases based on assuming the 12.5% allocation increases continued and in 2025, those amounts are increased 40% over current law. And this is the amount from which we will be prepared to advocate in future tax legislation to extend the policy. But, as drafted in the Senate bill, in 2026, the amounts drop down to back to the 2017 baseline as adjusted for inflation annually forward and that is how that 9% allocation increase is structured. We're modestly optimistic has been this'll remain, the way it is considered, as Congress deliberates on the bill.

[00:05:13] **Michael Novogradac, CPA:** Great. Thank you for that, Peter. Now there's another provision in the bill that many affordable housing stakeholders, ourselves included, have been pursuing for a while. And of course, I'm talking about lowering of the 50% finance-by test for private-activity-bond financed LIHTC housing, lowering that 50% test from 50% to 25%. And this lowering would take effect next year, in 2022, and it would expire after five years, noting that I guess the 4% credit in the Senate bill would be extended for four years and then this would be for five years. Is that right?

[00:05:51] **Peter Lawrence:** Yes.

[00:05:51] **Michael Novogradac, CPA:** OK. Thank you. Dirk, what are the implications of that change of this lowering of the 50% test for developers and investors? And probably more importantly, what are some of the things they should be doing now in potential anticipation of this lowering?

[00:05:54] **Dirk Wallace, CPA:** As you mentioned, this could take effect in 2022, so that's 16, 17 days away. And so when looking at your current pipeline of projects, I'm a numbers guy. I like to look at the numbers and you have to start thinking how our state's going to react to this. Are they going to limit bond issuance to say 30%, 35%, 40%? I know some states now, with the 50% test, are limiting the amount that they will allocate to one property. So if there is that limitation, would you need a bridge loan? Would you need maybe taxable financing and we call it maybe a taxable tail on your taxes and financing.

So that there's a lot of things that, could be, you know, moving parts in your development model now because we're lowering this 50% test. Now, the good news is it could lower carrying costs. What if you didn't need 55% of tax-exempt bonds to finance your project? So lowering that, maybe you don't have a gap and it lowers interest costs and issuance costs, it could make your project more financially feasible. So I think developers really do need to look at their current model, their current pipeline and just see how that might impact the numbers on their property.

[00:07:11] **Michael Novogradac, CPA:** Great. Thank you for that overview. Yeah, there's definitely, an expectation that there will be more bond transactions that will be financed because of the lowering of the finance-by test. It would obviously take a bit of time for the various state allocating agencies to adopt to the lowering, as well as the market itself, dealing with the notion that perhaps instead of getting 55% of my cost from tax-exempt bonds, if it's lower to say 30%, I'll have to have a taxable piece that I don't have to have now. Of course, that taxable piece may or may not have a much higher interest rate, but it definitely be something that they have to structure.

We often think about taxable tails, but yeah and those sorts of structures, I'm not sure that's really a tail. It's a large taxable second or a blended with the first.

But that being said, when we look into 2022 and looking at the Senate bill, the supply of 9% credits wouldn't necessarily go up, it might even go down a little bit because of the loss of the disaster credits, but we do expect the supply of 4% tax credits to increase. That increase could be dramatic. It's hard to know how much additional bond volume will get used or the same amount of bond volume might get used perhaps a little bit more just because other states are using more bond buying for housing, but the amount of housing financed by the existing bond volume will certainly be more.

We just don't know how much more housing could be financed, but we do expect there to be an increase in a 4% low-income housing tax credits. So of course, one of the questions we're getting from clients all the time is what do we expect the effect to be on equity pricing? So before I ask you to address that challenging question, I do want to note that just assume for the moment that interest rates stay the same, assume for the moment that the marginal corporate tax rate does not go up right now, we're not expecting the marginal corporate tax rate to go up. So with those two sort of core assumptions, if you could discuss some of the possible impact on equity pricing, [00:09:24] **Dirk Wallace, CPA:** Yeah, as you mentioned, supply being a big factor and looking at the current states, it used to be maybe only four or five states were oversubscribed. Now, it might be 20 states that are oversubscribed. So you know that they're definitely has a lot of competition now for these tax-exempt bond transactions.

So given that increase in supply and the assumptions that you laid out, it seems like we would see a drop in pricing. How dramatic that is is anyone's guess, but, you would just think with those various assumptions, that pricing would on certain properties.

[00:10:14] **Michael Novogradac, CPA:** I totally agree with you on that. And I would also note that I think you could also see a bit of a spread between 9% equity pricing and 4% equity pricing, such that 4%, a little bit less than a 9%. That's a critical component. I also think it would be good for the equity market because it will lead to more investors coming in and can lead to a more robust and diverse equity market and that's something that would be a nice addition.

Now let's talk about another provision in the bill. and that is a provision that provides a 50% basis boost for extremely low income properties that are financed with low-income housing tax credits. Now this 50% basis boost would be a substitute for the 30% potential, basis before. But it also, there's a requirement in the Senate bill that at least 8% of the per capita 9% credits be set aside for financing with extremely low-income units. So Dirk, if you could describe for our listeners what they should be thinking with respect to this provision, and then after that, Peter, I'd love for you to weigh in on how states will need to manage or can manage their credit cabs to comply with this, 8% set aside.

So Dirk.

[00:11:32] **Dirk Wallace, CPA:** Yeah, I hate to keep saying go back to the numbers, but I talk about what I know. Really, as Mike pointed out, there's this 50%, basis boost that's available for these extremely low income units, but the rent that you can charge on that unit is, 30% of the area median income. So now you can support less debt service, but yet you're getting this additional basis boost that could generate more equity. So I think this is really going to vary by where the property is located., what the rents are, what debt service can you still support and what that trade-off is between additional equity and the less debt service and just look at your property and see how the numbers work out given those two variables.

[00:12:18] **Michael Novogradac, CPA:** And then, Peter, before you weigh in, I'd also note that it, you talk about running the numbers and then you talk about what, but you also talk about what developers asked you to do for them. I think it is interesting to think about a given transaction and thinking, I could go with the 9%, and if I'm going to do difficult to develop area, maybe with 30% boost, I could potentially have some low-income units and get the 50% boost, but have some of the limitations on my operating income.

I also can be looking at it as a bond transaction and potentially with a lower 50% test, there'd be a lot more on the bond finance transactions and even with the bond finance transactions that could be thinking about. Do I want to use the 50% boost there? So there definitely seems like there'd be a lot more options to be running. Not only looking at it in terms of a financial feasibility perspective and the needs of the community. Also assessing how the state's prioritizing each of those various options, so you can identify where you have the greatest chance of success in terms of accessing financing. So there's definitely more options. There's more optionality, which is obvious, which is generally a good thing, but it also does require more analysis.

But Peter, turning away from developers for a moment, as I mentioned, I wondered if you could weigh in on the state allocating agencies and, the burden that places on them to manage their credit caps?

[00:14:01] **Peter Lawrence:** Yes. this is a provision that has been a part of the Affordable Housing Credit Improvement Act, which has been the industry- supported legislation. But this idea of a set-aside cap was not part of that legislation and it is relatively new. And I would say for the smallest states, the states getting the small-state and minimum allocations, it's going to be the toughest to thread the needle between ensuring that you at least have 8% of your allocations going for buildings that reserve at least 20% of their units for extremely low income households And those are just households that are earning either 30% of the area median income or less or the federal poverty line, whichever is greater. And that's going to be a real challenge. We get some analysis ...

[00:14:51] **Michael Novogradac, CPA:** Let me interrupt for just a second, Peter. So that the 8% is the per capita amount that they have to set aside, but I didn't actually mention the cap. So maybe you could talk about what the cap is, so our listeners fully appreciate what it means to thread the needle.

[00:15:10] **Peter Lawrence:** Yeah. Thanks for that. Mike. A step back here: under the, the Senate bill, the states would have to set aside, of their new authority, at least 8%, for buildings that reserve at least 20% of the units for extremely low income households, but they could only get the boost on no more than 13% of their 9% allocations so it wouldn't get the benefit of the boost beyond that 13%. So for small states that needle, 5%, it can be really small. It's not very easy. You're going to have to get the perfect set of applications to be able to thread that needle.

We looked at the nine states that receive small state allocations and on average, looking at their 2020 allocations and authority, you'd have to have between 17 and 27 units to thread that needle of having at least the 17 to satisfy the set-aside, but no more than 27 units to not move through the cap. And I imagine a lot of the small states will have one deal that could potentially be over that amount and you might be having a trouble to get one deal that meets the set-aside. That will be a challenge going forward for first small states, in particular.

[00:16:26] **Michael Novogradac, CPA:** Great. And also note there's also a cap on the maximum amount of bond-financed transactions that can avail themselves of the 50% and that'll create some challenges as well. Maybe more challenges given the diverse number of allocatees oftentimes or allocators, in a given state of private activity bonds. But, more to come on that.

One thing I noticed we haven't addressed yet is what we mean by extremely low income. So maybe you could describe, Peter, what an extremely low income unit at what the, income thresholds are.

[00:16:58] **Peter Lawrence:** The threshold for an extremely low income household under the bill would be a household earning no more than 30% of the area median income or the federal poverty line. Whichever is greater in that local jurisdiction.

[00:17:15] **Michael Novogradac, CPA:** Great. Thank you for that. So Dirk, let's go back to those that are developers or those that are working with developers. If I'm a developer listening to the podcast, I'm sitting there thinking, OK, what should I be doing now so I'm ready if and when this bill passes and these additional credits and basis boosts and funding options are available.

[00:17:52] **Dirk Wallace, CPA:** I would. As most developers know, there's a lot that goes into an application. You have to have as market study, supporting your property. And, if you're making changes like, “Hey, I'm going to be renting these 30% units now or to 30% households, instead of all 60% now,” you could have changes to your unit mix. You have to update market studies, update your applications, update the numbers. We've been talking about that a lot, so really, no, you don't want to wait until this passes to start doing that. You should really be looking at if I want to take advantage of some of the new provisions, how can I prepare now to then hit the ground running and be one of the first in line to, to be able to utilize these set asides or the additional basis boost.

[00:18:37] **Michael Novogradac, CPA:** That's a great point about the market study. you would think that if you're a developer now in a given state, that you want to be a little bit more expansive with your market studies, given the various funding options, which would and can lead to different unit mixes. You need to have a better understanding as to the market absorption of your different unit mixes. So I could definitely see more of the market studies being done, having a bit of optionality to them in terms of demonstrating support for different unit mixes. Also, as we discussed, running numbers with different approaches so you can see under which scenarios, which financing scenarios, is the project and development financially feasible. But I'd also layer in there that it's a time for developers and others to be working with their state allocating agencies, both on the bond side and the 9% side, because the states will have to be updating their allocation plans. And you want to make sure that you're weighing in and helping the states develop allocation plans that are best for that housing needs in their state. I don't know Peter, if he had any other additional thoughts to share or we can move on.

[00:19:50] **Peter Lawrence:** No, I just, I think that I want to encourage you to all reach out to a professional to start planning for 2022. Because there's going to be a lot of changes and you want to be prepared for that.

[00:19:54] **Michael Novogradac, CPA:** That's a great point. And there's a number of traps for the unwary, which we can't go into in a lot of detail here that you want to make sure that you don't fall victim to.

So Dirk we've discussed the key funding provisions dealing with the low-income housing tax credit, but there are two other provisions that we haven't discussed yet, that are funding related. The first one I wanted to chat about is the right of first refusal. Then we'll talk about qualified contracts. The bill includes changes to the right of first refusal provision at the end of the compliance period for low-income housing tax credit properties and a Senate bill contains changes that are both retroactive and that are prospective. But before we dive into the bills' proposed changes, I wonder if you could first give our listeners a brief overview of what the right of first refusal means in the context of the low-income housing tax credit.

[00:20:53] **Dirk Wallace, CPA:** Sure. So currently there is a right of first refusal that is available to certain nonprofit entities and the nonprofit entity, could be able to exercise this right of first refusal for a purchase price of debt plus taxes. So the nonprofit entity would, receive a bona fide offer, that offer could then trigger a right of first refusal. So it does operate as a right of first refusal and not necessarily as an option or anything else. And that's how it's currently written in the statute.

[00:21:22] **Michael Novogradac, CPA:** I would just emphasize the fact that it is a right of first refusal, not an option. And I would remind listeners we've discussed this before on the podcast that back in the day, when the right of first refusal was enacted, the initial legislation would have called for a purchase option. And there was a sort of conscious choice to go from a purchase option to a right of first refusal and they are distinct. There are a number of legal distinctions between the two and we also have some discussion of that on our website about the right of first refusal.

But with that as background, as I mentioned, one of the Build Back Better Act proposed revisions would amend that right of first refusal into a purchase option. And it would clarify that the option covers partnership assets and interests beyond merely the real property itself. It could include other partnership assets along with partnership interests, as well as the real property itself. The proposal isn't merely prospective, as I noted that it's both retroactive and prospective, the various changes. However, this right of first refusal provision that's in the Senate, currently in the Senate bill, is susceptible to certain Senate parliamentarian challenges. Peter, if you could explain what the exposure is more broadly about these parliamentarian challenges or parliamentary challenges, and then how that might apply to the right of first refusal provision.

[00:22:59] **Peter Lawrence:** So the Build Back Better Act is a budget reconciliation bill, which allows, if conforming with all the rules, the Senate to consider it all with just a majority vote, 50 votes, plus the vice president potentially breaking ties. But in order for that legislation to be considered, it must comply with what's called the Byrd Rule and the key component of the Byrd Rule for this provision is that, one, the provision has to have a budget impact. It is our understanding that the Senate parliamentarian reviews all of the language for the proposal, so if there's some elements of the proposal that do not have a budget impact, they would be ruled out of order. And the elements that do might come on to the next step, which is an evaluation of even if a provision does have a revenue impact, is that revenue impact "merely incidental" to an overall policy.

And that is largely the judgment call of the Senate parliamentarian. They review the case. They've got to hear the pros and cons of whether something should be included and then they rule. And that process is happening as we speak. As we're recording this podcast this week and we hope to find out in the coming days what happens on all of the provisions that are being reviewed by the Senator parliamentarian. It is quite possible that either parts or all of the right of first refusal proposal will be ruled out of order because it doesn't comply with the Byrd Rule.

[00:24:43] **Michael Novogradac, CPA:** And I would note that for those listening who also are familiar with opportunity zones, for opportunities zones, the original legislation that was introduced in the Senate back in 2017 did include reporting requirement for opportunity funds. However, under the Byrd Rule, those were ruled not to have a revenue impact, so those reporting requirements were removed. And that's just an example of the application of the Byrd Rule. So that bill, the Build Back Better Act, also includes changes to the qualified contract provision. As many listeners know, the qualified contract provision is the price at which a state agency needs to find a buyer when a low-income housing tax credit property gets past the compliance period and the owner submits this qualified contract request to the allocating agency.

Now, I will note that a number of states, as part of applying for tax credits, don't allow qualified contracts contracts. So California, for instance, doesn't allow qualified contracts. It's basically something that's in federal law and states can be more restricted than federal law and not more expansive. That's a general rule with the administration of low-income housing tax credits. So many states don't allow qualified contracts, but many states do.

So the Build Back Better Act would eliminate this option, this qualified contract option on a prospective basis, which basically means once you get past the end of the 15-year compliance period, you would continue affordable for at least the full 30 years, maybe beyond, with the income restrictions. But for existing properties, where at the end of the 15-year compliance period there is this qualified contract option, the rule would be changed as well. The bill would change the purchase price for existing properties that when you're determining a qualified contract price, that you take into account the affordability restrictions and the restricted rents and income-qualified units. Currently, the determination of the purchase price doesn't take that into account for purposes of that calculation. Now there's some concern that this provision could also be subject to the Byrd Rule. Peter, maybe you could, explain that or maybe you're going to say ditto.

[00:27:05] **Peter Lawrence:** Essentially that I guess to reiterate elements on this, the prospective or the retroactive pieces could be ruled as not having a revenue impact and therefore taken out or the whole parts or the whole could be reviewed. if those budget impacts are really, it's not also TBD.

[00:27:20] **Michael Novogradac, CPA:** Dirk, there is an effective date question here. So maybe you could weigh in on if there are listeners wondering what the effective date of such a change would be and the impact that could have on existing properties.

[00:27:37] **Dirk Wallace, CPA:** All right. Right now the effective date would be when the bill passes. So the question is when is the bill going to pass? This is going to be before year-end or after year-end? And that could impact whether or not a developer or property would have the ability to submit an application for qualified contract process.

Normally, I'm looking through a lot of the agreements and a lot of the state requirements. A developer is able to submit that application on the first day following either the 14th year, the 15th year or the first day after the end of the extended use periods. So that first day, would be Jan. 1. So you know, this is something where developments or developers may not be able to submit a qualified application process today, but they could submit this application after the first of the year if the bill gets pushed into January,

[00:28:29] **Michael Novogradac, CPA:** That's a pretty significant impact if the passage, enactment, of the bill gets delayed until next year. And I guess I would also note that both the wider aspects of the right of first refusal provision in the Senate bill in aspects of the qualified contract provision do have issues that would lend themselves, if enacted as is to future litigation in terms of the appropriateness of those provisions, the retroactivity aspect of this federal takings issues and the like, so certainly, those provisions won't end litigation and certainly will lead to some additional litigation.

But let's move on. There's one other low-income housing tax credit provision that is also a funding provision, but I wanted to discuss it at the end here as a transition into next week's podcast, renewable energy investment credits. This is a provision that would allow renewable energy investment tax credits, which generally means solar, to not reduce low-income housing tax credit basis. And so that is a good part, because right now there's a 50% basis adjustment that would lower the amount of loss and tax credits that you could claim on 50% of the cost of a solar development. But there's also the benefit that the Build Back Better proposal would give a 20% bonus for solar credit facilities that are placed on federally assisted housing, which would be particularly powerful for combining solar energy with housing tax credit properties. The economics seem very strong, if you're doing a bond transaction, particularly. So maybe Dirk, you could talk a little bit about the economics and the benefits of including with 9% versus a 4% versus maybe deciding I shouldn't include it, though I don't think that's going to be an option very often.

[00:30:45] **Dirk Wallace, CPA:** Sure. Yeah. and looking at the amount of benefit that putting solar on a property could generate, obviously the first one is a 50% solar tax credit. So 50% of the cost, you'll receive as a tax credit. The next is it's not reducing LIHTC basis, so if you're doing a 4% transaction, now that could cover maybe 40% of the cost and you could get 40% tax credit on cost of the solar as well. We also have a bonus depreciation which can be claimed on solar installations since it is considered five-year property. So you'll have bonus depreciation considerations to make, as well as if you're in a qualified census track or a difficult to develop area, you could receive 130% basis boost, on those costs as well. So when you add all that up, it makes it pretty attractive, just from a pure cost and benefit standpoint. But then you also look and say, I'm generating the solar electricity and it's probably going to decrease the utilities that I'm charging the tenants. So there could be that benefit there as well, where your utility allowances may decrease and if your utility allowances decreased, you may be able to increase the amount of net rent that you can collect on that unit. So there'll be a lot of consideration or a lot of things to consider and I think they're all going to be mostly positive when looking at whether or not you should put a solar on your tax credit property.

[00:32:10] **Michael Novogradac, CPA:** So thank you for that Dirk, definitely. For new construction and acquisition-rehabs, preservation transactions, it definitely seems like every developer, every project owner, would want to be assessing whether or not to include solar. And that's another aspect of the number-running and analysis that will need to be done. But it's also not just existing, it's not just new developments in preservation and acq-rehabs, there'll be a large number of existing owners of affordable housing that will look at this and say, if I get this 50% credit, the economics really makes sense. The combination of the 50% credit and the bonus depreciation really makes sense to be layering this in to affordable housing, so it's really an exciting provision. It can bring a lot of renewable energy to low-income housing. And there's also a financial benefits requirement to ensure that some portion of the benefit does go directly to the tenants. So we're really excited about this new provision.

So we've talked a lot about the low-income housing tax credit and the additional tax incentive aspects of that. I did want to shift now to a new provision, the neighbor homes tax credit. This new credit would be used to finance the construction or rehabilitation of owner-occupied homes in distressed neighborhoods. And as I said earlier, Dirk was on a podcast back in July about this credit. And I will share a link to that podcast in today's show notes for any listeners who may have missed it, so we're not going to go into detail as to how it works. That's a great, podcast to listen to, for that. And I also noted that Dirk is the co-head of the Neighbor Homes Tax Credit Working Group that we formed. And I'll ask you to talk about that in a moment, Dirk, but Peter, if I'm a developer or an investor who's interested in the neighborhood homes tax credit, what should I be doing now beyond, of course, listening to that podcast for the last July.

[00:34:21] **Peter Lawrence:** Indeed. One thing just quickly, I want to point out is that due to budget constraints, the amount of allocations has been reduced from the original conception. So there is that to consider. But the key thing is that before any allocations can happen, states are going to need to write qualified allocation plans for their neighborhood homes allocation. So we anticipate that most states will look to the low-income housing tax credits staff, given their expertise in drafting qualified allocation plans, even though they're doing it for rental housing, as opposed to owner-occupied housing, I imagine they'll be the lead. They may be assisted by their colleagues in the state agencies that deal with home-ownership or programs, but they're going to need to write these things because not a single. a dollar can be claimed until states have their qualified allocation plans drafted. And so they're going to be under the gun to get them out. Certainly Treasury and the IRS will need to put out regulations as well, but there'll be a lot of attention and focus on how the draft, these things and we want to encourage, if you're a developer or an investor, start reaching out your state. Now start reaching out to those staff that have done qualified allocation plans on the rental side and start talking to them about what you think should be key components of preferences, so that when those plans are drafted, you can have your input reflected earlier rather than later. Definitely, you don't want to wait on that front at all.

[00:35:58] **Michael Novogradac, CPA:** Great. Thank you, Peter. And Dirk, maybe you could talk about some of the work that Neighborhood Homes Tax Credit Working Group that you co-lead is doing.

[00:35:55] **Dirk Wallace, CPA:** Sure. Absolutely. So the working group, we do have a number of members: developers, investors, attorneys and actually a number of state housing finance agencies as well. So as Peter pointed out, the QAPs are going to be a key part of how these credits are allocated. The working group itself is also working on a financial model, to see how the credit would be, could be structured, see how the benefits could flow from the credit and then we're also putting ourselves in a position to be able to comment on regulations or even perhaps help draft regulations. Feel free to please reach out if you want to be part of this working group. Again, being on the front end to be able to help, kind of shape and mold the program, or the tax incentive, is definitely better than sitting back and just seeing what happens. Feel free to reach out if you want become a member.

[00:36:58] **Michael Novogradac, CPA:** Great. Thank you, Dirk. Now, the other big piece, I guess I should say the *larger* piece, of the affordable housing funding in the Build Back Better Act is for HUD. The legislation includes more than $156 billion for housing and community development. And I wanted to start with the largest component, which is $65 billion for public housing. So Peter, if you could describe ways that public housing authorities might use that funding. I think it's important because our listeners, if they're not public housing authorities, many of our listeners do work with public housing authorities. So they'll want to know about the funding and how the housing authorities might use the funding so they can help facilitate that use.

[00:37:47] **Peter Lawrence:** Great. Thanks. If I can just also put those numbers in context a little bit. That $156 billion is almost three times the amount of funding that HUD gets annually. So this really is quite a remarkable allocation of funding and it's even more remarkable for the public housing capital funding. In a typical year, PHAs will get less than $3 billion in capital funding to address all their needs and this legislation would provide $65 billion–more than 30 times the amount.

Now I think the reason why is that public housing has suffered decades of disinvestment, not enough capital funding. Every year, that less than $3 billion is not enough to meet their accrual needs that public housing agencies have and so this represents a once-in-a-generation catchup opportunity for PHAs to get. And there is the physical state in a lot of public housing properties is terrible and it needs a lot of investment and we are ready to try to help PHAs make the best use of that.

We see three main scenarios. One will be the old-fashioned way that some agencies, especially the smallest PHAs, I imagine will just simply take that capital funding and use it to fix up the properties and one-time projects and then return to the normal way of operating, going forward, using that catching up. But I imagine that many others will want to leverage those resources into mixed-financed properties, especially the larger public housing agencies. Many already have used the rental assistance demonstration and I imagine there'll be a lot more interest because a lot more potential rental assistance demonstration conversions are financially feasible with this, a tremendous amount of public capital resources.

And then they're to PHAs in between, which might fix up some properties in their portfolio the old-fashioned way and through some mixed-finance and we're more than happy to advise you in either circumstance. Rich Larson is the partner who leads our work with public housing agencies and on RAD transactions. I think really this will represent a tremendous opportunity that we're not likely to see again, anytime soon, so we want to take advantage of that opportunity as much as possible.

[00:40:31] **Michael Novogradac, CPA:** So thank you for that Peter. There are many other funding elements in the balance of the $156 billion. But I did want to focus on three others, namely $15 billion for the national Housing Trust Fund, $10 billion for HOME and $750 million for the Housing Investment Fund, which is structured similar to the Capital Magnet Fund.

If you could share what impact that will have and how public housing authorities or other affordable housing stakeholders should be acting, whether they should be expecting with respect to these funds that they can use to further develop and preserve affordable.

[00:41:13] **Peter Lawrence:** Absolutely. And you could imagine that additional $15 billion in the Housing Trust Fund would be matched up with that extremely low-income basis boost we talked about earlier as being a powerful one-two punch in making those types of properties more financially feasible. We've looked at HUD's historical data on use and the the average amount of Housing Trust Fund subsidy per unit is actually about $100,000, which would mean, if those averages continue onward, that we'd have,150,000 units financed with that $15 billion. Now, the average might change given everything else that's happening in the bill, but that's what historically has been used. And we imagine most of those Housing Trust Fund units have been financed along with low-income housing tax credits and we can imagine a lot more, particularly 4% bond deals, having that set of resources. It will make many of them many more financially feasible, including RAD deals as we just mentioned, you can see all those things come together there being very powerful. HOME is a little bit more flexible than the Housing Trust Fund. It can serve up to 90% of the area median income, but is very similar gap financing and the Capital Magnet Fund is which the Housing Investment Fund is very much, structured like. Given the requirement under the Capital Magnet Fund to leverage 10-to-1 that $750 million, ends up having the value of $7.5 billion, which could be really helpful. One unique nature of the Capital Magnet Fund in is that it goes on the entity level rather than a project level. So the developer essentially controls the resource in their organization, as opposed to within a particular property. And that's why many of our clients, really appreciate having that resource and so definitely reach out to Novogradac on how best to make use of these potential resources.

[00:43:13] **Michael Novogradac, CPA:** So thank you for that, Peter. now, as I mentioned earlier, the Senate is considering the bill and we're in the middle of December and I predict that the bill will pass this year or it won't. So I don't think I can be wrong with that, but maybe some logic theoretician can share with me how that statement could be wrong. But given that it could not pass this year and could potentially pass next year, maybe you could give our listeners your thoughts on what we should expect if the legislation doesn't pass before the end of the year. And it's pushed back into January.

[00:43:51] **Peter Lawrence:** So the bill as currently drafted, I think, is anticipated to pass before the end of the year. That was how the intent of Congress. And so the effective dates as currently drafted, largely assume a Jan. 1 effective date. And I think if things do slip into next year, which with every day that passes every day, we get closer to that becomes a lot more likely, we're going to have to, I think, work with Congress to re-examine those effective dates. And in some cases, It may make sense to keep event Jan. 1 because in terms of a practical application of the proposal it makes sense to have it start then. But there may be other circumstances where we're going to need to adjust it, given the fact that it will not be, in this circumstance, enacted by Jan. 1. And so I think that's something we're all going to add to our holiday season to-do list, we're all going to have to work with Congress on and we're going to try to make sure we maintain as much flexibility and make it as practical as possible, for those effective dates going forward.

[00:45:00] **Michael Novogradac, CPA:** Dirk, do you have any additional thoughts on the potentiality of it getting pushed into January?

[00:45:10] **Dirk Wallace, CPA:** I just think big picture with if you have a tax-exempt, bond-financed property, that you might be close on your 50% test. You may consider moving that closing. Talk to your state agency to see if it makes sense to move your closing to next year, to where that 50% test could be lowered. But we talked about a lot today as far as various, structure changes and things like that. So I would just encourage people to reach out. We can help analyze your pipeline. We can help with the various scenarios we talked today, and help you update your model to account for a lot of these changes that are coming.

[00:45:46] **Michael Novogradac, CPA:** Great. Thank you for that. Dirk, that's an excellent point about if you're close to the 50% test and the 50% test maybe declining, you might want to wait a bit. Before we wrap up now, I wanted each of you to share your email addresses so listeners can reach out to you if they want to. So I'll start with you, Peter.

[00:46:05] **Peter Lawrence:** Just my email address is my first name dot last name. So Peter.Lawrence@nc-llp.com

[00:46:24] **Michael Novogradac, CPA:** Great. Thank you. And Dirk?

[00:46:26] **Dirk Wallace, CPA:** A similar format, but a Dirk dot Wallace. Dirk.Wallace@novoco.com.

[00:46:42] **Michael Novogradac, CPA:** Excellent. thank you, Peter. Thank you, Dirk, for being a guest on Tax Credit Tuesday. I appreciate you sharing your insight. Please do stick around for our Off-Mike section, which I'll get back to you in a moment to our listeners.

On next week's episode of Tax Credit Tuesday, we'll continue our discussion of the $1.7 trillion Build Back Better Act, wherein and we'll discuss renewable energy tax incentives. Peter will be returning as a guest and he'll be joined by my renewable energy partner, Tony Grappone. Just like this week, we'll look at how listeners can best prepare for potential changes. You can make sure that you're notified of that episode and every week's episode by following or subscribing to the Tax Credit Tuesday podcast. Go to www.novoco.com/podcast to subscribe to and to stream the show on our website. You can also follow or subscribe to task Tuesday on iTunes, Spotify, Google podcast, Stitcher, and Radio Public.

Now I'm pleased to reach our Off-Mike section, where listeners can get some off-topic advice and words of wisdom from our podcast guests. I'm interested in the answers from both of you. So we're going to start off with the first question for Peter, and then I'll have you share your thoughts, Dirk.

We're at the end of the year, and this is a time where many people evaluate how things have gone and set goals. Peter, do you have any process for evaluating your progress and how often do you do that?

[00:49:02] **Peter Lawrence:** Mike, as the legislative regulatory process is highly variable, but we are at a situation where we could have that historic legislation we just discussed. It's been great to see that progress on our legislative goals it be a great year if things go according to plan. But more importantly is that we need to be engaged at all times. Because even when we don't have things like the Build Back Better Act, there are really crucial decisions being made by federal policymakers and we want to be at the table as those decisions are being made. So every year I try to make sure that we've made concrete progress on advancing our ideas in terms of, reaching out to the members of Congress and, I track how many times we've reached out to the various offices and see if we've gotten supporters added to key legislation and various regulations and guidance released. Those are all key metrics that I look to see how we've done in a particular year. And as I said, this year could be a quite an amazing year.

[00:49:25] **Michael Novogradac, CPA:** That's definitely interesting and in the area where you work and practice, because at some level there's a lot of folks who will use sort of an annual measuring period. But at some level at the federal level, you have a two-year measuring period as you work from Congress to Congress, even though, obviously within Congress, you have sub goals and the rest. But I'll turn the question to you, Dirk and your thoughts.

[00:49:48] **Dirk Wallace, CPA:** This is probably going to surprise a lot of people, but I have a spreadsheet. Who would have thought about that? So what kind of started as one Excel spreadsheet is slowly morphed into, I think I'm up to 17 different tabs on that sheet. But yeah, there's some things both personally and professionally. Some I track on a weekly basis, some on a monthly basis, some on a quarterly basis, but, yeah, there is file out there with my life on it. So there you go.

[00:50:18] **Michael Novogradac, CPA:** Thank you for that. Maybe I'll go to you Dirk first with the second of my three questions and that has to do with time management. And I always like collecting tips from my guests as to what their best time management tip is, or second or third best, if–in the event that you maybe have one that Peter was about to use or share. So do you want to share, if not your best time management tip, an important time management tip?

[00:50:50] **Dirk Wallace, CPA:** Sure. I've had a really, for me, it comes down to, organization and some people on my team laugh about me talking about organization. But I'm getting more organized and really, I'm using pretty much any tools that I can find, whether it's creating tasks in Outlook or for the spreadsheet that I talked about. So yeah, it's, it's really just, I find that the more organized I can be, then the more efficient I can be. And then I can manage a lot more things if, if you know where things are and keep things organized.

[00:51:19] **Michael Novogradac, CPA:** Peter, please weigh in.

[00:51:21] **Peter Lawrence:** One thing I discovered Mike, is that given how much a time-suck email can be, I try to make sure I spend time away from my email each day, because I fear that if I don't set aside that time, email will expand like a gas fills to fill a room. That I think is really important, to keep on track with everything that has nothing to do with email. Writing, for example. I feel like sometimes I needed to take everything off my computer and just focus on the Word document right in front of me and get that writing piece done, without distractions. Otherwise it takes that much longer to get those pieces.

[00:52:08] **Michael Novogradac, CPA:** No. I love that concept about email because that's definitely true. You can find yourself spending all day just responding to email. So you definitely have to. I do the same thing in terms of creating pockets of email time.

So the third question that I wanted to ask each of you about is your thoughts on habits and habits obviously govern our lives. I also like the saying, "make habit your friend," in the sense that habits can be consciously formed and have positive influences in your life and other habits, maybe not so much. I'm curious what your thoughts, what you do to try to create a new habit. So maybe Peter, I can start with you.

[00:53:00] **Peter Lawrence:** Oh, yeah. One thing I think a lot about reflecting over the recent history is the pandemic did change a lot about our lives. It almost forced us to make new habits, given the realities of having to cope with that. And I'm trying to take the good parts of what the pandemic has provided and as well as limit the downsides. Part of that, I think, is making sure that we get outside of our computer and whether that means you instead of sitting in your office all the time, doing your work, that you try to do things outside of the office as well. And think about it. Maybe we'll listen to a podcast as you go out for a walk. There's a lot of things that I think, you know, the pandemic has forced us to reevaluate how we structure our lives and I'm trying to take the good parts of that sort of forced reflection, as well as eliminate the bad parts.

[00:54:01] **Michael Novogradac, CPA:** Great. Thank you for that. I like your focus on how the pandemic has changed our lives now as you try to move beyond the pandemic, hopefully, soon, It's great idea to be thinking about which of those new habits do you want to keep and which ones do you want to get back to?

[00:54:22] **Dirk Wallace, CPA:** It's going to say, I assume we're talking about good habits here, right? When I'm looking at creating a new habit, it's mainly about routines and just putting it in your routine, making sure that it stays in your routine. Like Peter, when we spend more time at home and you always get that Apple notification on Sundays, it tells you what your screen time is for the day or screen time is for the week. And you start looking at that and say, maybe I should change a few things as I start to see that going up and up. Yeah, so just kind of as Peter said with his email, putting the screen time or putting the phone away. Lowering some screen time and just making that part of your routine and then just develops into to a new habit.

[00:55:06] **Michael Novogradac, CPA:** Thank you, for that. I do get those notices on a Sunday and it's always a good motivation for the coming week. And I'd also just note for our listeners. I know there's a number of books and such that are out there dealing with habits and how to make habit your frien, and how to create, habits and some of them use what's known as the SMART system. You guys may have heard about it before, it's an acronym. The S is for specific, the M in smart is measurable. The a is achievable. The R is relevant and the T is time-bound. So it's smart, specific, measurable, achievable, relevant and time-bound. What you both described fit within the smart system. So good for you.

So with that, that'll end this week's Tax Credit Tuesday. Thank you, Peter and Dirk, thank you for joining for this bonus session here. And to our listeners, we look forward to chatting with you next week.

Additional Resources

Email

Peter Lawrence

Dirk Wallace

Blog Posts

Nearly 750,000 Affordable Homes, Including LIHTC-financed Homes, At-Risk of Loss by 2031, but Build Back Better Act Would Preserve Many

Build Back Better Reconciliation Legislation Includes New LIHTC Basis Boost Provision for Extremely Low-Income Units

More than $12 Billion in LIHTC Provisions and Nearly $6 Billion for Neighborhood Homes Tax Credits in Nov. 3 Draft of the Build Back Better Reconciliation Bill Would Finance Close to 1 Million Affordable Homes Over 2022-31

Podcast

July 20, 2021: Neighborhood Homes Tax Credit