Annual Policy Conference Edition

Whither Infrastructure?
Congressional Infrastructure Funding & NMTCs: Where They Stand

Today, the New Markets Tax Credit (NMTC) Coalition gathers virtually for its Annual Policy Conference. The Coalition will release its annual *Progress Report*, which documents the success in reaching rural and urban communities outside the economic mainstream in providing patient, flexible capital that creates jobs and business opportunities and improved services.

The attendees to the conference will hear from leaders in Congress: Ways and Means Chairman Richard Neal (D-MA), Senator Roy Blunt (R-MO), Senator Ben Cardin (D-MD) and Senator Mark Warner (D-VA) and key Congressional staff members; and federal policymakers: Noel Poyo, Deputy Assistant Secretary for Financial Institutions at the Treasury Department, Jodie Harris, Director of the CDFI Fund, which administers NMTC. The conference agenda also includes investor and law firm panels; important discussions as NMTC practitioners face a post-pandemic economy.

Infrastructure Proposals

The question hanging over the conference is the state of and prospects for federal infrastructure legislation. In March, the Biden Administration released the outlines of the American Jobs Plan (AJP) and American Families Plan (AFP). The price tag for AJP totaled $2.3 trillion and was aimed at a more expansive definition of infrastructure – beyond transportation – to include housing, energy conservation, climate change, community and childcare facilities, broadband, and manufacturing revitalization and training. AFP centered on human services, including education, childcare, family and medical leave, nutrition, and health care. The estimated cost: $1.4 trillion.

To offset the cost of some of this new spending, the Administration proposed $1.5 trillion in new tax revenue, accomplished at least in part by rolling back some Trump-era tax cuts for high wealth individuals and corporations. The Administration tax plan also includes a permanent extension of NMTC, expansion of the Low-Income Housing Tax Credit, and a new tax credit for homeownership.

Following the release of the Administration proposal, Senate Republicans led by Sen. Shelley Moore Capito (R-WV), an NMTC supporter, sought negotiations with the White House. The Senate Republicans first proposed a $568 billion infrastructure plan – aimed at traditional infrastructure spending, ultimately increasing their offer to $978 billion, about one-third of which was spending above the current baseline. The Senate Republicans sought to offset some of the cost of the package by recouping some pandemic response appropriations and user fees.

As the negotiations unfolded, the Administration cut about $600 billion from its AJP request, scaling back broadband, highways, R&D, and transportation infrastructure, bringing the total to $1.7 trillion. From the start, the Biden proposals to increase tax revenue were a bridge too far for Senate Republicans, and the White House ended those negotiations at the end of May.

Since then, Biden has a new negotiating partner: a bipartisan group of Senators, including Republicans who worked with Congressional Democrats on the COVID response provisions of Consolidated Appropriations that Congress passed in December. That group includes Sens. Sinema (D-AZ), Warner (D-VA), Romney (R-UT), Cassidy (R-LA), Manchin (D-WV), Murkowski (R-AK), Collins (R-ME), Portman (R-OH), Shaheen (D-NH), Tester (D-MT), Tillis (R-NC), Durbin (D-IL), Hassan (D-NH), Graham (R-SC), Coons (D-DE), King (I-ME), Young (R-IN), Burr (R-NC), Hickenhooper (D-CO), Kelly D-AZ).

At the moment, that group is working on an infrastructure proposal of $970 billion over five years, 1.2 trillion over eight years, closer to the Biden plan of $1.7 trillion over the same period. Some $579 billion is new spending. Offsets currently include the recapture of unspent COVID fund, user fees, and infrastructure financing authority, and indexing of the gas tax.

The Policy, the Process, the Calendar

As it has from the start, the two sticking points to the infrastructure package have been (1) what constitutes infrastructure and (2) how to pay for it. Clearly, the more expansive White House view of infrastructure is not shared by Congressional Republicans. However, if it were simply a matter of "how much to spend" and "on what", Congress hashes out that all the time. But it's not.

Taxes are the real issue. If the Administration is as committed to tax increases as it appears, then a regular order bill - one that could get 60 votes in the Senate – is not in the cards. In which case, budget reconciliation, which requires only a simple majority in the Senate, is the other option. But only if all Senate Democrats are on board. If that were the case, there would be no bipartisan group negotiations.

Another possible route is to have two bills: one that encompasses traditional infrastructure spending and Biden priorities along with some un-objectionable pay-fors. That bill could presumably go through regular order and get enough buy-in from at least 10 Republicans.

The second bill would include the other less traditional infrastructure proposals from both AJP and AFP, along with tax increases. The bill will almost certainly require budget reconciliation's streamlined process and all Senate Democrats to be in agreement.

Before the House or Senate can get to the infrastructure legislation, Congress must pass a budget resolution and budget reconciliation instructions. The House passed their budget resolution this week. There is not a timetable in the House for consideration of budget reconciliation. The Senate will in July.

All of this is to say, the infrastructure spending and tax debate will continue well into the fall. At the beginning of this week, the House and Senate were scheduled to be in session about 20 days each before the month-long August recess.

About NMTC

Since the near-death experience of the Tax Cut and Jobs Act of 2017, Congress has taken a wiser approach to NMTC. In 2019, Congress extended NMTC for 2020 one year at $5 billion in annual credit authority, an increase of 44 percent over the previous year. In 2020, Congress extended NMTC for five years, through 2025 at the $5 billion rate - the largest extension in the history of the program.

Enactment of infrastructure legislation offers the best opportunity in many years for the enactment of a permanent extension of the NMTC. As the last two years have shown, interest and support for the credit is growing.

The NMTC Coalition has an extensive agenda aimed not only at putting the credit on firmer (i.e., permanent) footing but also improving NMTC.

It includes:

- Make the NMTC permanent by enacting the NMTC Extension Act of 2021 (H.R. 1321/S. 456) was introduced by Reps. Sewell (D-AL) and Reed (R-NY) and by Sens. Cardin (D-MD) and Blunt (R-MO) in February of 2021. The NMTC expires at the end of 2025. The bill provides $5 billion in annual credit authority, adjusted for inflation, permanent authorization, and AMT relief would increase investor interest and improve pricing for Credits, bring individuals into the NMTC investor pool, and drive more benefit to low-income communities for each federal dollar.

- Promote greater economic growth in distressed rural, urban and tribal communities by providing an additional $3 billion in NMTC allocation in conjunction with American Jobs Plan

- Provide a 5 percent set-aside for CDEs owned or controlled by people of color and authority for $3 million to the CDFI Fund for technical assistance grants and training to boost capacity. These initiatives would provide an on-ramp for minority-controlled CDEs by helping them build a track record of lending and investing through the NMTC.

- Amend the statute to ensure tribes and Native populations receive a proportional share of NMTC investments based on their share of poverty. This provision would target at least 5 percent of NMTC allocation for investments in Indian Country. H.R. 2, the Moving Forward Act passed by the House in 2020, included similar provisions.

- Support Investor Liquidity Provisions to improve the investor market, NMTC pricing, and ultimately subsidy available to projects and businesses. NMTC credit pricing has fallen over 10% over the past year. These should include a temporary lookback for NMTC investors and an exemption from the 75 percent cap on general business tax credits. Exempt the NMTC from existing (and future) corporate minimum taxes.

- Enact the Rural Jobs Act (H.R. 3357/S.1617). The legislation would increase NMTC allocation by $500 million in both 2022 and 2023 and direct it to rural, low-income communities with fewer than 50,000 residents. Twenty-five percent of the allocation would be set-aside for persistent poverty counties and high out-migration counties.

How all of this turns out remains to be seen. The Coalition is looking forward to an interesting conference and working with Administration and Congress over the next several months to permanently extend and improve NMTC.