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Recently Expired Community Assistance-Related Tax Provisions ("Tax Extenders"): In Brief

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Introduction

Collectively, temporary tax provisions that are regularly extended by Congress—often for one to two years—rather than being allowed to expire as scheduled are often referred to as *tax extenders*. The Tax Increase Prevention Act of 2014 (P.L. 113-295), signed into law on December 19, 2014, extended most expired and soon-to-expire, community assistance tax provisions through the 2014 tax year. As of January 1, 2015, each of these community assistance tax extenders has been expired. The 114th Congress may choose to further extend some or all of these provisions. On August 5, 2015, the Senate Committee on Finance reported the Tax Relief Extension Act of 2015 (S. 1946), which would extend most tax extenders, including the community assistance provisions discussed in this report, for two years (through 2016).[1]

This report briefly summarizes four community assistance-related tax provisions that expired at the end of 2014: (1) the New Markets Tax Credit, (2) Empowerment Zone Tax Incentives, (3) allocation of bond limitations for Qualified Zone Academy Bonds, and (4) the American Samoa Economic Development Credit. A discussion of these provisions' economic impact and most recent extension bills is also included.[2]

CRS Report R43449, *Recently Expired Housing Related Tax Provisions ("Tax Extenders"): In Brief*, by Mark P. Keightley, contains analysis of the low-income housing tax credit (LIHTC), which could also be used to encourage economic development in certain communities. For CRS coverage of other tax extenders, see

- CRS Report R43124, *Expired and Expiring Temporary Tax Provisions ("Tax Extenders")*, by Molly F. Sherlock;
- CRS Report R43510, *Selected Recently Expired Business Tax Provisions ("Tax Extenders")*, by Jane G. Gravelle, Donald J. Marples, and Molly F. Sherlock;
- CRS Report R43517, *Recently Expired Charitable Tax Provisions ("Tax Extenders"): In Brief*, by Jane G. Gravelle and Molly F. Sherlock and
- CRS Report R43688, *Selected Recently Expired Individual Tax Provisions ("Tax Extenders"): In Brief*, by Jane G. Gravelle.

New Markets Tax Credit[3]

The New Markets Tax Credit (NMTC) was enacted by the Community Renewal Tax Relief Act of 2000 (P.L. 106-554) to encourage investors to make investments in low-income communities (LICs) that traditionally lack access to capital. The NMTC is a competitively awarded tax credit overseen by the Community Development Financial Institutions (CDFI) Fund, organized within the Department of the Treasury. For each NMTC round authorized by Congress, the CDFI Fund ranks all requests for NMTC allocation authority and grants awards to those CDEs that score highest. A CDE is a domestic corporation or partnership that is an intermediary vehicle for the

[1] For revenue estimates, see Joint Committee on Taxation (JCT), *Estimated Revenue Effects of the Chairman's Modification to the Chairman's Mark of a Bill to Extend Certain Expired Provisions Scheduled for Markup by the Committee on Finance on July 21, 2015*, JCX-104-15, July 21, 2015, at https://www.jct.gov/publications.html?func=startdown&id=4803. For revenue estimates incorporating macroeconomic feedback, see JCT, *A Report To The Congressional Budget Office Of The Macroeconomic Effects Of The "Tax Relief Extension Act Of 2015," As Ordered To Be Reported By The Senate Committee On Finance*, JCX-107-15, August 4, 2015, at https://www.jct.gov/publications.html?func=startdown&id=4807.

[2] The Tax Reform Act of 2014 (H.R. 1; 113th Congress), introduced in December 2014, would have repealed or not extended all of these four community assistance tax provisions.

[3] Internal Revenue Code (IRC) Section 45D(f).

provision of loans, investments, or financial counseling in LICs.[4] All taxable investors are eligible to receive the NMTC, such as banks, venture capital firms, and other private investors.

The structure of the NMTC creates incentives for CDEs and private investors to participate in the program. CDEs benefit from the NMTC because they charge fees to their investors for organizing the NMTC application and for structuring the financing for a portfolio of community development projects. The private investors benefit because they receive, each year over seven years, an annual tax credit equal to 5% to 6% of the total amount paid for the stock or capital interest in the CDE that they purchase.[5] Overall, the tax credit amounts to 39% of the cost of the qualified equity investment (less the CDE's fees) as long as the interest in the investment is retained for the entire seven-year period. Thus, even if the community development project funded by the CDE incurs some losses, the value of the tax credit could generate a positive return for the private financers.

Opposition to the NMTC is partly based on the belief that corporations and higher-income investors primarily benefit from the provision or that the NMTC leads to an economically inefficient allocation of resources. For instance, while banks and other investors might benefit directly from the credit, Freedman (2009) found that benefits of the NMTC to selected low-income communities were modest.[6] The study concluded that poverty and unemployment rates fall by statistically significant amounts in tracts that receive NMTC-subsidized investment relative to similar tracts that do not. From a national economic perspective, the impact of the NMTC would be greatest in the case where the investment represents net investment in the U.S. economy rather than a shift in investment from one location to another. Gurley-Calvez et al. (2009) found that corporate NMTC investment represented a shift in investment location but a portion of individual NMTC investment (roughly $641 million in the first four years of the program from 2001 to 2004) represented new investment.[7]

The NMTC has been extended as a temporary tax provision since 2008, after its initial authorization expired at the end of 2007.[8] In more recent years, the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312) extended NMTC authorization through 2011 and permitted a maximum annual amount of qualified equity investments of $3.5 billion. The American Taxpayer Relief Act of 2012 (ATRA; P.L. 112-240) extended the NMTC through 2012 and 2013 with an authority of $3.5 billion per year. The Tax Increase Prevention Act of 2014 (P.L. 113-295) extended the NMTC's $3.5 billion authority for one year (through 2014) with a 10-year revenue cost of $978 million.[9]

In the 114th Congress, the Tax Relief Extension Act of 2015 (S. 1946) would extend the NMTC for two years (through 2016) at an annual allocation level of $3.94 billion (which is the $3.5 billion level adjusted for inflation between 2008 through 2014). The Joint Committee on Taxation

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[4] As CDEs serve purposes outside the NMTC, they do not have to be for-profit organizations. However, to receive a NMTC allocation a CDE must be a for-profit organization.

[5] For more details, see CRS Report RL34402, *New Markets Tax Credit: An Introduction*, by Donald J. Marples and Sean Lowry.

[6] Matthew Freedman, "Teaching new markets old tricks: The effects of subsidized investment on low-income neighborhoods," *Journal of Public Economics*, vol. 96, no. 11-12 (December 2012), pp. 1000-1014.

[7] Tami Gurley-Calvez et al., "Do tax incentives affect investment? An analysis of the New Markets Tax Credit*," Public Finance Review*, vol. 34, no. 4 (2009), pp. 371-398.

[8] Given that some of these tax extenders have been passed retroactively, the CDFI Fund has often issued a Notice of Funds Availability (NOFA) for the NMTC in the Federal Register despite not having formal authorization of funds.

[9] JCT, *Estimated Revenue Effects of H.R. 5771, the "Tax Increase Prevention Act of 2014," scheduled for consideration by the House of Representative on December 3, 2014*, JCX-107-14R, December 3, 2014, at https://www.jct.gov/publications.html?func=startdown&id=4677.

(JCT) estimates that this provision would cost $2.1 billion over ten years.[10] Additionally, the New Markets Tax Credit Extension Act of 2015 (H.R. 855, S. 591) would permanently extend the NMTC; initially set the annual tax credit allocation authority at $3.5 billion; and adjust the tax credit allocation authority for inflation, as measured by changes in the Consumer Price Index for All Urban Consumers (CPI-U).

For more information on the NMTC, see CRS Report RL34402, *New Markets Tax Credit: An Introduction*, by Donald J. Marples and Sean Lowry; and CRS Report R42770, *Community Development Financial Institutions (CDFI) Fund: Programs and Policy Issues*, by Sean Lowry.

Empowerment Zone Tax Incentives

Empowerment Zones (EZs) are federally designated geographic areas characterized by high levels of poverty and economic distress, where businesses and local governments may be eligible to receive federal grants and tax incentives.[11] Since 1993, Congress has authorized three rounds of EZs (1993, 1997, and 1999) with the objective of revitalizing selected economically distressed communities. EZs are similar to Enterprise Communities (ECs) and Renewal Communities (RCs), which are also federally-designated areas for the purposes of tax benefits and grants.

A number of studies have evaluated the effectiveness of the EZ, EC, and RC programs. The Government Accountability Office (GAO) and the Department of Housing and Urban Development (HUD) have failed to link EZ and EC designation with improvement in community outcomes.[12] Other research has found modest, if any, effects and calls into question the cost-effectiveness of these programs. This inability to link these programs to improvements in community level outcomes should not be interpreted as meaning that the EZ, EC, and RC programs did not aid economic development. The main conclusion from these studies is that the EZ, EC, and RC programs have not been shown to have caused a general improvement in the economic conditions of the localities. One possible cause for this inability to empirically show the program effects on a large geographic area is that the EZ tax incentives are relatively small. Another possibility is that the EZ tax incentives are targeted at business owners and do not provide direct benefits to workers in EZs.

Six tax incentives are typically related to EZs:[13] (1) local designation of an EZ;[14] (2) increased exclusion of gain;[15] (3) issuance of qualified, tax-exempt zone academy bonds (QZABs) in EZs;[16] (4) EZ employment credits under the Work Opportunity Tax Credit (WOTC);[17] (5) increased

[10] Joint Committee on Taxation (JCT), *Estimated Revenue Effects of the Chairman's Modification to the Chairman's Mark of a Bill to Extend Certain Expired Provisions Scheduled for Markup by the Committee on Finance on July 21, 2015*, JCX-104-15, July 21, 2015, at https://www.jct.gov/publications.html?func=startdown&id=4803.

[11] For a list of EZs, see U.S. Department of Housing and Urban Development (HUD), "List of Current Empowerment Zones and Updated Contact Information," at http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/economicdevelopment/programs/rc/ezcontacts.

[12] For more discussion, see CRS Report R41639, *Empowerment Zones, Enterprise Communities, and Renewal Communities: Comparative Overview and Analysis*, by Donald J. Marples.

[13] For a quick reference chart with a description of each of these provisions, see U.S. Department of Housing and Urban Development (HUD), *Empowerment Zone Tax Incentives Summary Chart*, August 2013, at http://portal.hud.gov/hudportal/documents/huddoc?id=ez_tis_chart.pdf.

[14] IRC Sections 1391(d)(1)(A)(i) and (h)(2).

[15] IRC Sections 1202(a)(2) and 1391(d)(1)(A)(i).

[16] IRC Sections 1394 and 1391(d)(1)(A)(i).

[17] IRC Sections 1396 and 1391(d)(1)(A)(i). For more information of the WOTC, see CRS Report R43729, *The Work Opportunity Tax Credit*, by Benjamin Collins and Sarah A. Donovan.

expensing under Internal Revenue Code (IRC) Section 179 for businesses located in EZs;[18] and (6) non-recognition of gain on rollover of EZ investments.[19]

EZs were created by legislation enacted in 1993, and most zones expired at the end of 2009. The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312) extended the EZ and District of Columbia Enterprise Zone designations to December 31, 2011. ATRA (P.L. 112-240) extended EZ designations through 2013.[20] The Tax Increase Prevention Act of 2014 (P.L. 113-295) extended the EZ tax incentives for one year (through 2014) with a revenue cost of $251 million.[21]

In the 114th Congress, the Tax Relief Extension Act of 2015 (S. 1946) would extend the EZ designations and tax incentives for two years (through 2016). The JCT estimates that this provision would cost $647 million over ten years.[22] The bill would also amend the requirements for tax-exempt enterprise zone facility bonds to treat an employee as a resident of a particular EZ if they are a resident of a different EZ, EC, or qualified LIC. Additionally, the Empowering Jobs Act of 2015 (S. 408) would extend EZ designations for two years (through 2016); and expand the definition of employees of a qualified business entity, for the purposes of tax-exempt enterprise zone facility bonds and EZs, to include residents of an empowerment zone, an enterprise community, or a qualified low-income community.

For more analysis of EZs, seeCRS Report R41639, *Empowerment Zones, Enterprise Communities, and Renewal Communities: Comparative Overview and Analysis*, by Donald J. Marples.

Qualified Zone Academy Bonds—Allocation of Bond Limitation[23]

Typically, state and local governments can issue tax-exempt bonds to finance the construction of certain public facilities, such as schools. However, some low-income communities have found it difficult to finance new schools or rehabilitate existing schools.

As one option to finance elementary and secondary schools, eligible local governments in EZs, ECs, or other designated zones can issue Qualified Zone Academy Bonds (QZABs). Proceeds from the bonds may be used for renovating school buildings, purchasing equipment, developing curricula, or training teachers or other school personnel—but not for new construction.[24] The

[18] IRC Sections 1397A and 1391(d)(1)(A)(i). For more information on Section 179 expensing, seeCRS Report R43510, *Selected Recently Expired Business Tax Provisions ("Tax Extenders")*, by Jane G. Gravelle, Donald J. Marples, and Molly F. Sherlock, and CRS Report RL31852, *The Section 179 and Bonus Depreciation Expensing Allowances: Current Law and Issues for the 114th Congress*, by Gary Guenther.

[19] IRC Sections 1397B and 1391(d)(1)(A)(i).

[20] However, ATRA did not provide for the extension of the designation for the District of Columbia Enterprise Zone, and therefore that designation ended on Dec. 31, 2011.

[21] JCT, Estimated Revenue Effects of H.R. 5771, the "Tax Increase Prevention Act of 2014," scheduled for consideration by the House of Representative on December 3, 2014, JCX-107-14R, December 3, 2014, https://www.jct.gov/publications.html?func=startdown&id=4677.

[22] JCT, *Estimated Revenue Effects of the Chairman's Modification to the Chairman's Mark of a Bill to Extend Certain Expired Provisions Scheduled for Markup by the Committee on Finance on July 21, 2015*, JCX-104-15, July 21, 2015, at https://www.jct.gov/publications.html?func=startdown&id=4803.

[23] IRC Sections 54E and 1397E.

[24] For information on federal programs for new school construction or renovation, see CRS Report R41142, *School Construction and Renovation: A Review of Federal Programs*, by Cassandria Dortch. See the "Tax Credit Bonds" section of that report for more details on the qualifications for QZAB debt instruments.

Secretary of Education makes all allocations of QZAB bonds to school divisions or charter schools.

Banks, insurance companies, or corporations actively engaged in the business of lending money are eligible to purchase the QZABs and are eligible for a tax credit equal to the dollar value of the bonds held multiplied by a credit rate determined by the Secretary of the Treasury.[25] In other words, QZABs pay investors a tax credit in lieu of an interest payment from the issuer. The value of the credit is included in taxable income and can be used to reduce regular or alternative minimum income tax liability.[26]

The provision is intended to encourage public-private partnerships, as eligibility partly depends on a school district's ability to attract private contributions that have a present value equal to at least 10% of the value of the bond proceeds. In effect, QZABs also shift part of the burden of financing education from state and local governments to the federal government. Although the local government issuer pays the principal on the bond, the federal government pays the interest cost associated with QZABs.

The Taxpayer Relief Act of 1997 (P.L. 105-34) created QZABs. The limit for QZAB debt was $400 million annually from 1998 through 2008. The American Recovery and Reinvestment Act of 2009 (ARRA; P.L. 111-5) increased these limits to $1.4 billion for 2009 and 2010. The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312) extended authority for QZABs through 2011 with a $400 million limit. ATRA (P.L. 112-240) extended the $400 annual limit for 2012 and 2013. The Tax Increase Prevention Act of 2014 (P.L. 113-295) extended the $400 million limit on QZABs for one year (through 2014) with a revenue cost of $126 million.[27]

In the 113th Congress, the Rebuilding America's Schools Act (H.R. 1629; S. 1523) would have made permanent the QZAB limitation amount of $1.4 billion annually, permitted private entities to waive the 10% matching requirement for QZABs, and allowed QZAB proceeds to be used for constructing a new public school facility in which such an academy is established.

In the 114th Congress, the Tax Relief Extension Act of 2015 (S. 1946) would extend QZABs with a $400 million annual limit for two years (through 2016). Additionally, the bill would require a private entity matching contribution requirement of 5%. The Joint Committee on Taxation (JCT) estimates that this provision would cost $258 million over ten years.[28]

For more information on QZABs and other tax credit bonds, see CRS Report R40523, *Tax Credit Bonds: Overview and Analysis*, by Steven Maguire.

American Samoa Economic Development Credit[29]

The American Samoa economy is largely dependent on three sectors: public works and government, tuna canning, and the residual private sector (e.g., tourism and other services). From

[25] The credit rate is set to approximate the current taxable market rate of bonds issued with similar risk and term. Unused credit capacity can be carried forward for up to two years.

[26] For a basic discussion of how tax deductions and tax credits work, see CRS Report R42872, *Tax Deductions for Individuals: A Summary*, by Sean Lowry.

[27] JCT, *Estimated Revenue Effects of H.R. 5771, the "Tax Increase Prevention Act of 2014," scheduled for consideration by the House of Representative on December 3, 2014*, JCX-107-14R, December 3, 2014, https://www.jct.gov/publications.html?func=startdown&id=4677.

[28] JCT, *Estimated Revenue Effects of the Chairman's Modification to the Chairman's Mark of a Bill to Extend Certain Expired Provisions Scheduled for Markup by the Committee on Finance on July 21, 2015*, JCX-104-15, July 21, 2015, at https://www.jct.gov/publications.html?func=startdown&id=4803.

[29] Section 119 of P.L. 109-432, as amended by Section 756 of P.L. 111-312.

2002 to 2007, real gross domestic product (GDP) per capita in the territory decreased by 1.9%.[30] Real GDP growth ranged from -2.9% to 2.1% over the same period, largely due the changes in the exports of canned tuna (which comprise 90% of the territory's exports).[31] Two shocks disrupted the economy in the following years. First, Chicken of the Sea, one of the island's two major tuna canneries, announced in 2007 that it was laying off over 2,000 workers in American Samoa and shifting production to a labor-efficient plant in Georgia, closer to its customer base on the mainland. Second, an 8.0+ magnitude earthquake hit the island in September 2009 and generated tsunami-sized waves. President Obama declared the island a disaster zone and ordered federal aid to assist with local emergency efforts.[32] Real GDP in American Samoa decreased by 2.6% in 2012 and 2.4% in 2013.[33] Government spending on reconstruction efforts has tapered off, but private construction spending has increased. Washington State-based Tri Marine International completed a tuna cold-storage facility in 2014 and opened a cannery in January 2015 that expected to employ up to 1,500 workers, according to the company's press release.[34]

The American Samoa economic development credit (EDC) is a credit against U.S. corporate income tax in an amount equal to the sum of certain percentages of a domestic corporation's employee wages, employee fringe benefit expenses, and tangible property depreciation allowances for the taxable year in respect of the active conduct of a trade or business within American Samoa. The credit was available only to a U.S. corporation that, among other requirements, claimed the now-expired possession tax credit (predecessor to the EDC) with respect to American Samoa for its last taxable year beginning before January 1, 2006.[35]

Proponents of the credit claim it encourages eligible companies to retain or expand their operations on the island. Given the criteria of the provision, however, it is unlikely that many companies can qualify for the credit. Media reports suggest the main beneficiary of the EDC, thus far, has been StarKist, which has retained its cannery operations in American Samoa.[36] Additionally, the credit does not encourage new companies to invest in locating their operations on the island. In 2012, American Samoa Governor Togiola Tulafono wrote a letter to the chair and ranking Member of the Senate Finance Committee requesting that the credit be expanded to all qualified businesses on the island.[37]

The current form of the EDC was first enacted in the Tax Relief and Health Care Act of 2006 (P.L. 109-432) and originally expired at the end of 2007. The provision was extended by the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312)

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[30] U.S. Department of Commerce, "The Bureau of Economic Analysis (BEA) Releases Estimates of the Major Components of Gross Domestic Product for American Samoa," press release, May 10, 2010, at http://www.bea.gov/newsreleases/general/terr/2010/asgdp_051010.htm.

[31] Ibid.

[32] Department of Homeland Security, "Federal Emergency Management Agency (FEMA): President Declares Major Disaster For Territory of American Samoa," press release, September 29, 2009.

[33] U.S. Department of Commerce, "The Bureau of Economic Analysis (BEA) Releases 2013 Estimates of Gross Domestic Product for American Samoa," press release, September 15, 2014, at http://www.bea.gov/newsreleases/general/terr/2014/asgdp_091514.pdf.

[34] Tri Marine, "Tri Marine Officially Opens State-of-the-Art Tuna Processing Facility in American Samoa," press release, January 30, 2015, at http://www.trimarinegroup.com/news/press/STP_Inauguration_012415.html.

[35] See Section 936 of H.Rept. 109-455.

[36] See Congressman Eni F.H. Faleomavaega (AS), "Senate Finance Committee Passes Two-Year Extension of American Samoa Economic Development Credit," press release, April 3, 2014, at http://faleomavaega.house.gov/media-center/press-releases/senate-finance-committee-passes-two-year-extension-of-american-samoa.

[37] Letter from Togiola Tulafono, Governor, American Samoa, to Senators Max Baucus and Orrin Hatch, Chairman and Ranking Member, U.S. Senate Committee on Finance, June 22, 2012, at http://americansamoa.gov/index.php/news-bottom/153-gov-togiola-requests-us-senate-finance-committee-for-economic-development-credit-to-include-all-qualified-businesses-in-american-samoa.

through 2011 and by ATRA (P.L. 112-240) through 2013. The Tax Increase Prevention Act of 2014 (P.L. 113-295) extended the EDC for one year (through 2014) with a revenue cost of $14 million.[38]

In the 114th Congress, the Tax Relief Extension Act of 2015 (S. 1946) would extend the EDC for two years (through 2016). The JCT estimates that this provision would cost $33 million over ten years.[39]

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[38] JCT, *Estimated Revenue Effects of H.R. 5771, the "Tax Increase Prevention Act of 2014,"* scheduled for consideration by the House of Representative on December 3, 2014, JCX-107-14R, December 3, 2014, https://www.jct.gov/publications.html?func=startdown&id=4677.

[39] JCT, *Estimated Revenue Effects of the Chairman's Modification to the Chairman's Mark of a Bill to Extend Certain Expired Provisions Scheduled for Markup by the Committee on Finance on July 21, 2015*, JCX-104-15, July 21, 2015, at https://www.jct.gov/publications.html?func=startdown&id=4803.