An Update on Indiana's Low-Income Housing Tax Credit

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Indiana's recently enacted state low-income housing tax credit took effect on July 1, 2023. The Affordable and Workforce Housing Tax Credit (AWHTC) is available to multifamily projects financed with tax-exempt bonds issued by the Indiana Housing and Community Development Authority (IHCDA) that receive federal 4% low-income housing tax credits (LIHTC). The AWHTC generally follows the federal LIHTC but is taken over a period of five years instead of 10, and the credit period begins with the taxable year in which a building in the project is placed in service.

Indiana Senate Bill 419, enacted during the 2023 legislative session, made some clarifying changes and technical corrections to the initially adopted AWHTC. Specifically, this bill clarified that the credit period with respect to the AWHTC commences in the taxable year in which a building in the project is placed in service, rather than concurrently with the federal LIHTC. Additionally, IHCDA can award AWHTC in any amount up to 100% of the anticipated aggregate LIHTC awarded to a project. This bill removed the previously enacted provision that the AWHTC be awarded in an amount greater than 40% and less than or equal to 100% of the aggregate federal LIHTC.

While the AWHTC is codified in Indiana Code 6-3.1-35, most of the specifications for the application process, eligibility, limitations, and decision criteria fall under the discretionary authority granted to IHCDA from the Indiana Legislature and are detailed in Schedule D-1 of Indiana's 2023-2024 Qualified Allocation Plan (QAP).

State lawmakers approved up to $30 million in aggregate AWHTC to be allocated each year for a period of five years, meaning a maximum of $6 million of the annual credit will be allocated this year. Additionally, the QAP specifies that 20% of the annual state credit amounts ($1.2 million) is set aside for projects in each of Indiana's five geographic regions, similar to the allocation of bond volume cap throughout the state. These regions are as follows: Northwest, Northeast, Central, Southwest, and Southeast. The QAP

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further explains applicants cannot use the AWHTC or other gap sources to supplant available LIHTC—applicants must maximize their 4% LIHTC request.

The QAP also places eligibility limitations based on the occupancy type of the prospective property. Applications will not be accepted for affordable assisted living, 100% supportive housing, and 100% student housing, generally, though some exceptions exist. Applications with age restrictions will not receive preference. Moreover, applications in which no more than 25% of total units will be supportive housing for persons experiencing homelessness or persons with intellectual or developmental disabilities will not receive preference but will be considered.

IHCDA has accepted applications for the AWHTC in the 2023 funding round, and awards will be announced after the November 2023 IHCDA Board of Directors meeting. Once awarded AWHTC, sponsors should consult with qualified counsel to help structure the project to maximize the benefits and availability of the AWHTC.

Frost Brown Todd counsels investors, developers and other key stakeholders on low-income housing transactions in states across the country. We stay at the forefront of all legislative efforts affecting the industry, and we are ready to assist clients with navigating the changing legislative environment. For more information, please contact the author of this article or any attorney from Frost Brown Todd's Multifamily Housing team.

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