Colorado Creates New Middle-Income Housing Tax Credit

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Colorado continues to expand on recent legislative efforts to address the state's housing shortage. On May 30, 2024, Governor Jared Polis signed House Bill 1316 to establish a new Middle-Income Housing Tax Credit (the "Middle-Income Credit") with the goal of encouraging private sector investment in affordable housing. This new credit will be administered through the Colorado Housing and Finance Authority (the "Authority") which also oversees the state's Low-Income Housing Tax Credit ("LIHTC").

Credit Overview

The Middle-Income Credit will be available for owners of multifamily projects incorporating rent-restricted units that are affordable for individuals and families making between 80-120% of the local area median income. This range goes up to 140% of area median income for projects located in "rural resort counties," as classified by the Colorado Department of Local Affairs. For projects that include both income-restricted and market rate units, the Middle-Income Credit would be prorated based on the proportion of the project's units that are income-restricted. Projects will need to maintain their income-restricted units for at least 15 years, evidenced by a recorded restrictive covenant.

Eligible project owners include for-profit and nonprofit developers, along with any Colorado government agencies that develop qualifying multifamily projects. These project owners will go through a competitive application process to receive Middle-Income Credits and must demonstrate that the credits are necessary for their project's financial feasibility. The Authority will publish an allocation plan with scoring criteria, review applications, and issue allocation certificates for projects receiving awards. Beginning January 1, 2025, the Authority may allocate up to $5 million each year through 2026, then up to $10 million each year in 2027 through 2029. Any credits not allocated by the Authority each year will roll over to the following year. Middle-Income Credits that remain

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unallocated as of December 31, 2029, become state LIHTCs allocable by the Authority. Projects will not qualify for the Middle-Income Credit if they have been issued federal or state LIHTCs.

A pass-through entity claiming Middle-Income Credits may apportion those credits to its partners or members in whatever manner the parties agree. State and local governments as well as quasi-governmental entities that receive an award of Middle-Income Credits may sell those credits and invest the proceeds into developing their project. Credits will be claimed by taxpayers over a five-year credit period beginning with the taxable year in which the qualified project is placed in service. If the taxpayer does not have enough state income tax liability for a given year to claim credits, then the credits may be carried forward up to three taxable years before expiring.

Conclusion

Developers should consult counsel to determine how or if their current or future projects could benefit from this new Middle-Income Credit. Frost Brown Todd advises investors, developers and other key stakeholders on affordable 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 in navigating the changing legislative environment.

For assistance understanding how this new legislation may apply to your projects, please contact the authors or any attorney on Frost Brown Todd's Multifamily Housing industry team.

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