Insights

New Markets Tax Credit and Low-Income Housing Tax Credit Provisions Included in End-of-Year Coronavirus Relief Package

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On Sunday, December 27, 2020, President Trump signed into law the bipartisan Consolidated Appropriations Act, 2021 ("Act"). The 5,593-page Act provides $900 billion in coronavirus disease 2019 ("COVID-19") pandemic relief and $1.4 trillion in government funding for the rest of fiscal year 2021. Included in the Act are many provisions for households facing financial distress caused by the continuing crises brought on by the COVID-19 pandemic, including: $25 billion in rental assistance, a one-month extension of the Centers for Disease Control and Prevention eviction moratorium (through January 31, 2021); $600 in direct stimulus checks for qualifying taxpayers; $300 per week in enhanced unemployment insurance benefits through March 14, 2021; and $325 billion in additional small business assistance, including $284 billion for first and second Paycheck Protection Program loans (see our prior alert here). In addition, the Act includes the following extensions and amendments related to the New Markets Tax Credit ("NMTC") and Low-Income Housing Tax Credit ("LIHTC") programs:

- **Five-Year $25 Billion Extension of the NMTC Program:** The Act extends the NMTC program for five years through 2025 and continues the $5 billion in annual NMTC allocation authority first established for 2020, which was set to expire on December 31, 2020. The projected annual impact of $5 billion in NMTCs is expected to create or expand approximately 690 manufacturing and industrial projects; 275 mixed-use projects, combining housing, commercial and social services; 255 new or improved health clinics, hospitals, and medical offices; and 775 investments in day care centers, Boys and Girls Clubs, and other community facilities. In addition, the five-year extension is projected to generate an estimated 590,000 jobs in low-income communities throughout the United States.[1]

- **Minimum 4% Rate for "4 Percent" LIHTC Projects:** The Act establishes a permanent minimum 4% rate for calculating LIHTCs. The LIHTC program is designed to subsidize either 30% percent or 70% of the low-income unit costs in a project. The nature of the project dictates the LIHTC credit percentage received. The 30% subsidy, which is commonly known as the "4 percent" tax credit, applies to the acquisition of existing buildings for rehabilitation and new construction financed by tax-exempt bonds ("4% Projects").

  LIHTC industry participants have been advocating for a permanent 4% rate for several years in light of the historically low rates associated with 4% Projects. Over the past year, the "4 percent" rate has actually fluctuated between 3.18% in January to the current December rate of 3.09%, putting at risk the financial feasibility of many affordable housing projects. Effective January 1, 2021, the minimum rate associated with calculating LIHTCs for these 4% Projects will be increased to 4%. This rate increase will provide an infusion of much needed equity into “4 percent” LIHTC developments, paving the way for additional affordable housing units to be developed through 2030.

The Act’s extensions and amendments to the NMTC and LIHTC programs are welcome responses to the immediate economic crises brought on by the COVID-19 pandemic and the ongoing efforts to provide affordable housing for low-income individuals and communities throughout the United States.

If you have any questions regarding this alert, or the related federal tax credit programs, please contact Scott C. Frissell, Kendall A. Schnurpel or your regular Krieg DeVault contact.

[1] New Markets Tax Credit Receives Five-Year, $5 Billion Extension, The New Markets Tax Credit Coalition, December 22, 2020, https://nmtccoalition.org/2020/12/22/new-markets-tax-credit-receives-five-year-5-billion-extension/.