



South Carolina Low Income Housing Tax Credit: Too Much of a Good Thing

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The availability of “affordable housing” has become a major issue in many cities, counties and states across the United States, and South Carolina is no exception. To help address the affordable housing shortage, in 2020, South Carolina enacted a state low-income housing tax credit (SC LIHTC) which provided a state tax credit equal to the federal low-income housing credit (Federal LIHTC) for an eligible project. The SC LIHTC was not subject to a competitive award process or an overall cap on the tax credits that could be claimed. The budget impacts prepared in connection with the enactment of the SC LIHTC predicted a modest number of projects would utilize the SC LIHTC, but the substantial subsidy provided by the credit allowed developers to move forward with many more projects than originally anticipated. As a result, the SC LIHTC was amended in 2022 to cap the total credits that could be claimed in a fiscal year and to implement a competitive process for awarding the credits.

Effective January 1, 2022, SC LIHTCs must be allocated to eligible projects pursuant to a competitive process that promotes highest value and greatest public benefit. The total credits that can be allocated in a fiscal year must not exceed \$20 million, taking into account only the annual SC LIHTC allocated to projects. South Carolina Housing Finance and Development Authority (SC Housing), a state agency that has long been responsible for allocating the Federal LIHTC for eligible projects, is responsible for allocating the SC LIHTC, but has not yet published procedures on the manner credits will be allocated.

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The SC LIHTC principally incentivized projects utilizing the 4% Federal LIHTC, and thus required the projects to be financed by tax-exempt bonds. Tax-exempt bonds issued for multifamily housing projects and other projects principally benefitting non-governmental actors must receive an allocation of “volume cap” annually allocated under federal tax law to each state, including the State of South Carolina. Since volume cap is annually allocated under federal tax law, any unused volume cap expires at the end of each calendar year unless it is irrevocably committed to a bond issuer to be “carried over” for a bond to be issued within the next three calendar years.

When the SC LIHTC was enacted in 2020 (and, indeed, for several years since the early 2000s), South Carolina’s annual volume cap allocation had not been fully utilized for eligible projects, and unused volume cap was principally committed to SC Housing at the end of each year as “carry-over” volume cap. Indeed, SC Housing has historically been the principal bond issuer of tax-exempt bonds to finance multifamily housing projects and has utilized “carry over” volume cap it received, and which was scheduled to expire in a particular year, to satisfy demand for projects to be financed by it during such year. However, due to the unprecedented demand following the enactment of the SC LIHTC, SC Housing could not issue tax-exempt bonds for all eligible projects and many local and regional housing authorities instead sought to, and in fact some did, issue tax-exempt bonds to finance eligible projects.

In South Carolina, volume cap is allocated each year by the State Fiscal Accountability Authority (SFAA), a five-member board consisting of the Governor, the Treasurer and the Comptroller General of the State, the Chairman of the Finance Committee for the South Carolina Senate and the Chairman of the Ways and Means Committee for the South Carolina House of Representatives. Contemporaneous with the amendments to the SC LIHTC in 2022, changes were also made to how SFAA allocates volume cap. SFAA has adopted limits on the timing of volume cap allocations during the year and limits on volume cap allocations made for discrete purposes, including economic development projects, multi-family housing, single-family housing, and other qualified purposes. For 2023, SFAA allocated \$0 in volume cap to multi-family housing that could be undertaken by state or local housing authorities. However, SC Housing has substantial “carry over” volume cap previously allocated to it which can be used to issue tax-exempt bonds to fund multi-family housing. Although some local housing authorities received “carry over” volume cap at the end of 2021 to fund certain multi-family housing projects previously approved, those authorities have not received volume cap allocations (whether new or “carry over” volume cap) since the beginning of 2022, and presently are not able to issue tax-exempt bonds to fund new multi-family housing projects beyond those previously approved.

SC Housing does not accept applications for tax-exempt bond financing continuously. Instead, short application windows have been opened (and then closed) during the last three years, during which applications can be filed. The next application window, and volume cap available have not yet been announced.

The SC LIHTC program has essentially been paused while changes to implement a competitive award process are implemented. Developers wishing to use the SC LIHTC will need to monitor developments closely, as there may be a small window of time during which SC Housing will allocate credits and commit to issuing tax-exempt bonds to finance a multi-family project.