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Availability Of Tribal Economic Development Bond Allocations: Holland & Knight

Based on a recent Internal Revenue Service (IRS) announcement, the Published Value Cap Limit for Tribal Economic Development Bonds (TEDBs) is steadily shrinking.

The [IRS reported](#) on March 31, 2017, that the TEDB Published Volume Cap Limit for the period commencing April 1, 2017, has now been reset at \$155 million per tribal applicant. This figure represents 20 percent of the amount of the total remaining available volume cap of \$777 million. As described in [Notice 2012-48, 2012-31](#), IRS guidance provides that no tribal government will receive an allocation that would cause the aggregate amount of volume cap allocated to that tribal government to exceed the Published Volume Cap Limit in effect. The Published Volume Cap Limit for any period is the greater of: 1) 20 percent of the amount of available volume cap as of the first day of such period, as described in the notice; or 2) \$100 million. The notice also indicates that the IRS will allocate an amount of available volume cap equal to the amount requested in the application on a first-come, first-served basis by order of submission date.

In 2009, Congress initially designated a total of \$2 billion in volume cap for TEDB allocations. Since that date, approximately 61 percent of the TEDBs allocations have been used by tribal governments. Initially, there was little use of TEDBs by tribal governments. Recently, however, the utilization of TEDBs by tribes has accelerated noticeably.

As the overall volume cap diminishes, the amount that can be requested by any one tribe is reduced. For example, at \$500 million in overall available cap, the maximum request per tribe will be reduced to \$100 million. Under the formula, it will stay at that level until the aggregate amount is used in its entirety. Once the overall TEDB Volume Cap is exhausted, it can only be reauthorized by an act of Congress.

Congress is likely to consider changes to the tax-exempt bond rules in the context of tax reform. While state and local governments are working diligently to preserve their current ability to issue tax-exempt bonds for a variety of uses, tribal governments are pressing for parity with other governmental issuers. Unfortunately, there is no guarantee that TEDB Volume Cap will be replenished or that other favorable legislative changes sought by tribes for many years, such as elimination of the “essential governmental function” test, will be achieved this year.

TEDB allocations may be used not only for bonds, but for tax-exempt bank loans, including draw-down loans. (See Holland & Knight alert, [“IRS Amends TED Bond Volume Cap Rules to Accommodate Draw-Down Loans,”](#) Dec. 8, 2015).

With interest rates on the rise and the economy improving, many tribal governments are considering whether to pursue tax-exempt financing for economic development projects.

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The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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