goldfarb
lipman
attorneys

1300 Clay Street, Ninth Floor
Oakland, California 94612
510 836-6336

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M David Kroot
John T. Nagle
Polly V. Marshall
Lynn Hutchins
Karen M. Tiedemann
Thomas H. Webber
John T. Haygood
Dianne Jackson McLean
Michelle D. Brewer
Jennifer K. Bell
Robert C. Mills
Isabel L. Brown
James T. Diamond, Jr.
Margaret F. Jung
Heather J. Gould
William F. DiCamillo
Juliet E. Cox
Erica Williams Orcharton
Amy DeVaudreuil
Barbara E. Kautz
Luis A. Rodriguez
Xochitl Marquez
Rafael Yaquian
Josh Mukhopadhyay

Facsimile
510 836-1035
San Francisco
415 788-6336
Los Angeles
213 627-6336
San Diego
619 239-6336
Goldfarb & Lipman LLP

LAW ALERT: AMERICAN RECOVERY AND REINVESTMENT ACT

PUBLIC AND SUBSIDIZED HOUSING PROVISIONS UNDER ARRA

The American Reinvestment and Recovery Act of 2009 ("ARRA") was signed into law February 17, 2009, and contains several provisions that directly benefit public and subsidized housing.

Public Housing Capital Funds

ARRA provides $4 billion to public housing agencies ("PHAs") for capital projects. The funds are divided into two categories: $3 billion will be distributed to PHAs within 30 days, based on the formula used for the amounts of capital funds available and distributed during the fiscal year 2008. HUD has discretion to exclude disbursements to PHAs designated as "troubled" or any PHA which declines to accept the funds. The other $1 billion is to be disbursed competitively, with priority being given to projects which leverage private sector funding; or involve renovations, energy conservation or retrofit investments. HUD must obligate the competitive funding by September 30, 2009.

PHAs must give priority to the following types of capital projects:

- Projects on which contracts can be awarded within 120 days of receipt of funds;
- Projects designated for the rehabilitation of vacant units; and
- Projects which are underway or included in the PHAs five year capital funds plans.

Funds may not be used for operating or rental assistance activities, and they may not be used to substitute for other federal, state, local or PHA generated funds. In addition, any restriction of funding to replacement housing uses shall be inapplicable.

ARRA imposes the following timeframes for the expenditure of funds by PHAs:

- One hundred percent (100%) of the funds must be obligated within one year of availability;
- Sixty percent (60%) must be expended within two years of such period; and
- One hundred percent (100%) must be expended within three years of availability.

Funds not obligated or expended in accordance with the above-referenced time periods will be recaptured and reallocated to other PHAs.

ARRA permits HUD to waive or specify alternative requirements for certain statutory or regulatory provisions (except for those related to fair housing, labor standards, antidiscrimination and environmental requirements) and state and local standards related to the procurements of goods and services. One-half of one percent (0.5%) of the funds may be used for staffing.

Project Based Section 8, Section 202, and Section 811 Assistance

ARRA also provides $2 billion for full year renewals of Project-Based Section 8 rental assistance contracts.

An additional $250 million is provided for grants and loans to Section 202 elderly, Section 811 disabled, and Project-Based Section 8 housing projects for energy saving retrofits and green investment. These energy assistance funds will be administered through the Office of Affordable Housing Preservation at HUD. Funds must be expended by Project owners within 2 years of receipt. In order to qualify for the funds, Projects must have satisfactory management review ratings, be in substantial compliance with all applicable performance standards, and commit to at least an additional 15 years of affordability. Projects receiving this financing must comply with the federal Davis-Bacon wage rate requirements. HUD may share in any future savings generated by the Projects, and may also waive certain regulations, except as stated above.

For more information, please call Isabel Brown, Dianne Jackson McLean, or any Goldfarb & Lipman attorney at 510-836-6336.