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LAW ALERT

WHAT'S NEW WITH THE NEW MARKETS TAX CREDIT PROGRAM

<u>The President's Budget Proposal & NMTC</u>

On February 13, 2012, President Obama introduced his 2013 budget, which proposes to extend the New Markets Tax Credit ("NMTC") program until December 31, 2013. Under the President's proposal there would be a NMTC allocation of $5 billion for 2012 and another $5 billion allocation for 2013, with $250 million set aside each year to help finance healthy food options in distressed communities. The President also proposes that NMTC be used to offset Alternative Minimum Tax liability. These proposed changes to the NMTC program would take effect upon the enactment of the budget bill.

Although the NMTC program expired on December 31, 2011, the 2011 NMTC allocation is set to be awarded to community development entities ("CDEs") in the next two weeks. In addition, there are outstanding NMTC allocations held by CDEs which need to be deployed. It is also important to note that there is pending legislation to extend the NMTC through December 31, 2012. Congress has extended the NMTC program numerous times over the past several years.

<u>NMTC Final Regulations</u>

On December 5, 2011, the federal government adopted final regulations to clarify what is a "targeted population" along with addressing other NMTC programmatic issues.

The NMTC program is a tax credit program which promotes investment in qualified active low income community businesses ("QALICBs") located in low income communities. One way an entity may become an eligible QALICB is by serving certain "targeted populations." Targeted populations are defined as: individuals, or an identifiable group of individuals, including an Indian tribe, who (A) are low income persons; or (B) otherwise lack adequate access to loans or equity investments. Low income means having an income, adjusted for family size, of not more than (A) 80% of area median income for metropolitan areas; and (B) for non-metropolitan areas, the greater of: (i) 80% of the area median income; or (ii) 80% of the statewide nonmetropolitan area median income. The final regulations allow for a QALICB to determine a person's income by using (i) U.S. Census Bureau data; (ii) data from HUD; <u>or</u> (iii) the individual's total income as reported on Form 1040.

The final regulations also clarify the requirements regarding how QALICBs generate income "derived from" sales, rentals, services, or other transactions with non-low income and low income individuals. The QALICB may treat the value of the sales, rentals, services, or other transactions with low income persons at fair market value even if the low income person does not pay fair market value. Money, property or services provided to a QALICB for the benefit of low income persons are considered valid income for a QALICB, but only if the person providing such money, property or services does not receive a direct benefit from the QALICB.

The final regulations also clarified the rule for QALICBs that are in the business of renting real property to comply with the NMTC requirements. A QALICB that solely rents real property to others may satisfy the 50% gross income requirement of the NMTC program if the entity: (i) rents to individuals who are low income persons or (ii) rents to a QALICB serving low income targeted populations.

The last clarification in the final regulations deals with low income ownership of the QALICB. One way a QALICB can meet the NMTC requirements is if it is owned by low income persons. Under the final regulations, a determination of whether an owner is a low income person may be made at the time of the qualified low income community investment (QLICI) is made to the QALICB, <u>or</u> at the time the ownership interest of the owner is acquired by the low income owner, whichever is later.

For more information on the NMTC, please contact John Haygood, Margaret Jung, Amy DeVaudreuil or Luis A. Rodriguez, or any other Goldfarb & Lipman attorney at 510-836-6336.

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