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HUD GIVETH (TO PRESERVATION PROJECTS) AND TAKETH AWAY (FROM OTHER HUD-ASSISTED PROJECTS)

Two new directives have been issued recently by the United States Department of Housing and Urban Development ("HUD") which affect certain HUD-assisted affordable housing projects. The first permits distributions and equity take-out loans at so-called Preservation projects. The second requires owners to include broadband infrastructure as part of any new construction or substantial rehabilitation of projects funded through a variety of HUD programs.

Housing Notice 2016-16, issued October 28, 2016, implements recent statutory changes to the Low-Income Housing Preservation and Resident Homeownership Act (LIHPRA) of 1990. Specifically, those changes permit owners of such properties (commonly referred to as Preservation properties) to receive previously prohibited distributions of surplus cash, and to obtain excess refinancing proceeds where those properties meet certain specified criteria described by HUD. The requirements include, for example, that the property meets certain minimum physical standards and is in compliance with all nondiscrimination, equal opportunity and HUD administrative requirements. Pursuant to the Notice, owners of such projects may be eligible to receive all funds in that project's Residual Receipts account, withdrawals from which had previously been controlled by HUD.

Separately, HUD published final regulations on December 20, 2016, affecting a number of federal programs. The changes are designed to encourage owners to include broadband infrastructure wherever feasible as part of the new construction or substantial rehabilitation of affordable housing projects. Covered

programs include Choice Neighborhoods Grant, CDBG, HOME, HOPWA, Continuum of Care, Housing Trust Fund, Project-Based Voucher, Section 8 project-based housing assistance payments, public housing capital fund, and Section 202 and 811 projects.

HUD implemented the new rules because it determined that high-speed Internet access is a necessity for American families, businesses and consumers, and found further that having such access within the home increases household income and yields higher education achievement for students. However, access to such infrastructure was unevenly distributed in American society, particularly for older, less educated and lower-income populations, as well as persons with disabilities and most rural areas. HUD determined that the cost of adding such infrastructure in new or substantially rehabilitated projects was minimal, and offered substantial benefits to project residents.

The regulations define broadband infrastructure as any high-speed technology such as cable, fiber optics, wiring, wireless or other permanent infrastructure that enables high-speed Internet to be made accessible in each unit. Recognizing that not all projects will be able to absorb the costs of this requirement, the regulations exempt projects for which the location or structure of the project makes such installation infeasible or the cost would result in a fundamental alteration of the project or impose an undue financial burden.

If you have any questions regarding these notices, please contact Bob Mills, Dave Kroot, or Joshua Mason at Goldfarb & Lipman, 510-836-6336.