



# Affordable Housing Alert

## Developments in affordable housing law

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### American Recovery and Reinvestment Act becomes law

Yesterday, President Obama signed into law the American Recovery and Reinvestment Act of 2009. This stimulus legislation includes substantial appropriations and tax incentives for affordable rental housing. Detailed below are specifics on some of its provisions.

#### Affordable housing appropriations provisions

- \$2.25 billion for HOME, to be coordinated with low-income-housing tax credits to fill financing gaps caused by sharply reduced equity in the tax credit market.
- \$2 billion, to ensure 12 months' funding of Section 8 renewal contracts.
- \$250 million for energy improvements for Section 202/811 and Section 8 properties; OAHF will administer.
- \$1 billion for Community Development Block Grants.
- \$2 billion for Neighborhood Stabilization Program, addressed in more detail below.
- Another \$4 billion for public housing authorities, for rehabilitating or retrofitting public housing units, \$3 billion of which to be distributed to public housing authorities according to the existing formula; those funds will be awarded competitively.
- \$1.5 billion for homeless prevention.
- \$100 million for lead-based-paint abatement.
- \$510 million for Native American Block Grants.

#### Exchange proposal

In addition, the bill allows housing credit agencies to exchange a portion of their housing credits with the Treasury in exchange for cash grants that would be used in lieu of or to supplement tax credit equity. There are a number of questions concerning how this process (and the HOME gap financing mentioned above) will work, which will be addressed in a IPED/National Council of State Housing Agencies webinar on Friday, February 20, 2009, from noon to 2 p.m. EST. For information about the webinar, or to register, please click here: [NCSHA/Nixon Peabody Webinar](#).

There are strict deadlines in many of these provisions to get the funds allocated within 120 days from enactment of the bill—a very fast turnaround for agency implementation—and spent within two – three years.

#### New Markets Tax Credit

The Act provides for \$3 billion of new authority for the CDFI Fund of the Treasury Department to issue allocations of New Market Tax Credits. This is split in two parts: the first \$1.5 billion for 2008 applications which were already made to the CDFI Fund, but which did not receive allocations or did not receive the full amount of allocation requested; and the second \$1.5 billion added to the existing \$3.5 billion for new 2009 allocations. The Act also permits credits allocated in 2009 to be taken against the alternative minimum tax, in the same way that 2008 allocations can be taken against AMT.

If you have questions about these provisions, please contact Steven J. Wallace (202-585-8714 or [swallace@nixonpeabody.com](mailto:swallace@nixonpeabody.com)), Monica Sussman (202-585-8833 or [msussman@nixonpeabody.com](mailto:msussman@nixonpeabody.com)), Richard Goldstein (202-585-8730 or [rgoldstein@nixonpeabody.com](mailto:rgoldstein@nixonpeabody.com)) or Herbert F. Stevens (202-585-8811 or [hstevens@nixonpeabody.com](mailto:hstevens@nixonpeabody.com)).

## Neighborhood Stabilization Program update

On September 29, 2008, the Department of Housing and Urban Development (HUD) issued its Notice of Allocations for the Neighborhood Stabilization Program (NSP). The NSP was funded by Title III of the Housing and Economic Recovery Act of 2008 (HERA) in the amount of \$3.92 billion, to provide assistance to states, insular areas, and units of local government (grantees) for the redevelopment of abandoned and foreclosed-upon homes and residential properties. The notice advises the public of the allocation formula and allocation amounts, as well as alternative requirements and waivers of regulations with regard to the NSP. HUD is beginning its first round of implementation, but already Congress has provided for \$2 billion in the American Recovery and Reinvestment Act of 2009.

HUD is processing the use of NSP funds by grantees as substantial amendments to a grantee's current approved consolidated plan and annual action plan. The existing Disaster Recovery Grant Reporting System will track the use of NSP funds.

The notice waives many Community Development Block Grant (CDBG) statutory and regulatory requirements to either conform to the HERA requirements or facilitate implementation of the NSP. The notice grants permission to grantees to incur pre-award costs as if each was a new grantee preparing to receive its first CDBG allocation. The notice highlights the NSP's new income group of between 80 percent and 120 percent of area median income; 25 percent of funds must be targeted to people at 50 percent of area median income or less.

As under the regular CDBG program, grantees in this program may fund costs, such as reasonable developer's fees, related to NSP-assisted housing rehabilitation or construction activities, and NSP funds may be used to redevelop acquired property for nonresidential uses, such as a public park, commercial use, or mixed residential and commercial use. New construction of housing is an eligible use if done to redevelop demolished or vacant properties. A highlight of the notice is that an eligible use of funds is to acquire and redevelop FHA foreclosed properties. The notice confirms the NSP requirement that any acquisition be at a discount from the current market-appraised value, even though such requirement is in conflict with Section 301 of the Uniform Relocation Act. A grantee will not be required to meet the one-for-one replacement requirements of 42 USC 5304(d). The notice cautions grantees contemplating using NSP funds to assist an acquisition involving eminent domain action to consult appropriate legal counsel before taking action, as the HERA requirement for a discounted purchase price may run afoul of the Fifth Amendment to the U.S. Constitution.

Now, the stimulus act adds \$2 billion, administered through states, local governments, and nonprofits on a competitive basis. Recipients may not refuse to lease to a Section 8 tenant. The owner of any foreclosed housing acquired with stimulus funds would be required to give tenants at least 90 days' notice to vacate and allow them to remain until the end of their lease terms, in most cases.

If you have questions about these provisions, please contact Richard Michael Price (202-585-8716 or [rprice@nixonpeabody.com](mailto:rprice@nixonpeabody.com)).