

LAW ALERT: AMERICAN RECOVERY AND REINVESTMENT ACT

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CITY AND COUNTY HOUSING OPPORTUNITIES UNDER ARRA

The American Recovery and Reinvestment Act (ARRA), enacted on February 17, 2009, includes several provisions that create additional housing opportunities at the local government level. Major provisions affecting city and county housing programs are summarized below.

Community Development Block Grant Program (CDBG)

ARRA grants \$1 billion in new CDBG funds, (which represents a funding augmentation equal to about 23% of the most recent fiscal year's total nationwide CDBG funds disbursement), to be disbursed to 2008 grantees using the normal CDBG allocation formula. Recipients of these CDBG funds must give priority to projects that will award contracts within 120 days of receiving the funds.

Neighborhood Stabilization Program (NSP)

ARRA provides \$2 billion in new NSP funds. Unlike the NSP funds provided under the 2008 Housing and Economic Recovery Act (HERA), the new ARRA NSP funds will be awarded competitively to States, local governments, nonprofits, or consortia of nonprofits, which may submit proposals in partnership with for-profit entities. Similar to the 2008 HERA requirements, the timelines for the use and distribution of the ARRA NSP funds are tight. HUD must establish grant selection criteria by May 1, 2009.

Applications will be due to HUD by July 17, 2009. All ARRA NSP funds must be obligated by February 2010. Fifty percent of the funds must be expended within 2 years from the date the funds become available to the grantee and the remaining amount must be expended within 3 years. While it is not yet clear how the ARRA NSP funds will be awarded and

distributed to the various grantees, HUD must ensure that grantees are in areas with the greatest number and percentage of foreclosures and that grantees will expend the ARRA NSP funds within the required timelines. Additional selection criteria include grantee capacity, leveraging potential, concentration of investment to achieve neighborhood stabilization, and other HUD-determined factors.

Under ARRA: (1) the NSP program income requirements, including those that require the return of certain program income to the federal government after five years, have been eliminated; (2) NSP funds may be used not only to establish but also to operate land banks for foreclosed homes and residential properties; and (3) if NSP funds are used to redevelop demolished or vacant properties, the redevelopment must be for housing purposes. In addition, demolition activities are generally capped at 10% of the applicable grant. ARRA also adds a new eligible use for the ARRA NSP funds: 10% of the new NSP funds may be used for "capacity building of and support of local communities" that receive new or existing NSP funds.

ARRA also grants additional rental protections to tenants in NSP-acquired properties with the goal of preventing eviction of tenants after foreclosure. A tenant that entered into a lease before a foreclosure has the right to continue to occupy the NSP-assisted home through the lease's term, except that an owner may terminate the tenancy in order to use the home as his/her primary residence. A 90-day notice is required for any termination of tenancy in an NSP-assisted property. ARRA also prohibits recipients of

NSP funds from refusing to rent to Section 8 voucher holders and new owners of NSP-assisted properties must continue to recognize tenant-based Section 8 contracts. Finally, ARRA permits housing authorities, in certain circumstances, to utilize Section 8 voucher funds to pay utility bills and moving and security deposit costs for tenants holding Section 8 vouchers.

Homeless Prevention Programs (HPP)

ARRA grants \$1.5 billion for homelessness prevention and “rapid re-housing.” HUD will publish a notice establishing the HPP requirements no later than March 19, 2009, and funds will be distributed to local governments and nonprofits using HUD’s Emergency Shelter Grant formula. Grantees will be required to collect data on the use of funds awarded and persons assisted.

ARRA HPP funds must be used quickly: 60% of the funds must be used within one year from the date they become available to the grantees and the remaining funds must be spent within two years. ARRA HPP funds may be used for (1) short-term or medium-term rental assistance, (2) housing relocation and stabilization services (including housing search, outreach to property owners, credit repair, security or utility deposits, utility payments, rental assistance for a final month at a location, moving cost assistance, and case management), and (3) other appropriate activities for homeless prevention and rapid re-housing for persons who have become homeless.

Lead Hazard Reduction Program (LHRP)

ARRA grants \$100 million for HUD’s lead hazard reduction program. The new LHRP funds

will be available first to jurisdictions who applied in 2008 but were not granted awards due to funding limits. Remaining funds will be added to the 2009 NOFA amount. ARRA also identifies the Healthy Homes Initiative, Operation Lead Elimination Act Plan, or the Lead Technical Studies program as “special projects,” which have a faster environmental review. In addition, 50% of new LHRP funds must be spent within 2 years of the date the funds are available to grantees and 100% within 3 years of date of availability.

Prevailing Wage Requirements

All ARRA spending programs, including those discussed in this Law Alert, must adhere to prevailing wage requirements under the Davis-Bacon Act. State prevailing wage laws and exemption requirements also apply.

Waiver or Alternative Requirements

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) in order to expedite the use of funds in the programs described above.

For more information please call Polly Marshall, Heather Gould, Barbara Kautz, Xochitl Marquez, or any Goldfarb & Lipman attorney at 510-836-6336.