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Client Alert

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AGG Housing Finance & Community Development Practice Group Update

The American Recovery and Reinvestment Act of 2009 ("ARRA" or "Recovery Act") recently signed into law by President Obama is intended to help jumpstart the economy, and among other things, offers additional funding and increased incentives to various programs that should favorably impact affordable multi-family housing and community development. Specifically, ARRA: (i) allocates additional HOME tax credit assistance program ("TCAP") funds to state housing credit agencies; (ii) offers state housing credit agencies the opportunity to receive grants from the Federal Treasury in exchange for a portion of their 2009 Low Income Housing Tax Credit ("LIHTC") allocation authority and/or all of their unused 2008 LIHTC authority; (iii) provides various additional funds to public housing agencies; and (iv) increases funding for the New Markets Tax Credit ("NMTC") program. Below is a brief summary of these initiatives:

HOME TCAP Funds Available for Allocation by State Housing Credit Agencies

ARRA provides that $2.25 billion worth of HOME tax credit assistance program funds be made available to state housing credit agencies for use in connection with 9% LIHTC projects and tax-exempt bond deals utilizing 4% LIHTC in order to address project funding gaps caused by reduced tax credit equity pricing and availability. Funds are to be made available through a competitive allocation process to project owners that either have received or simultaneously receive a LIHTC "award" (the term "award" is not specifically defined in ARRA). Projects awarded LIHTC during fiscal years 2007, 2008 or 2009 will be eligible for the additional financing. Priority will be given to those projects expected to be completed within three years of the enactment of ARRA.

Some HOME restrictions will continue to apply, such as Fair Housing laws and various labor standards (including Davis-Bacon wage requirements), but HUD has the authority to waive other HOME restrictions to ensure that funds are quickly deployed to projects. To further ensure quick deployment, ARRA requires that 75% of all the funds are to be committed within one year of enactment with all remaining funds committed within three years.

TCAP funds will be available to state housing credit agencies until September 30, 2011. Projects awarded TCAP funds will be subject to the requirements of IRC Section 42, including use requirements, as well as rent and income limitations. These funds will not reduce a project's eligible basis.

LIHTC Exchange

State housing agencies are also eligible, *at their election*, to exchange a portion of their 2009 LIHTC allocation and all of their remaining unused 2008 allocation for grants from the Secretary of the Treasury equal to 85 cents for every dollar of tax credit allocation returned to Treasury. Such an exchange will reduce the agencies' total amount of allocable credits, but it will enable the agencies to use the grant proceeds in the form of "sub-awards" to project owners for construction, acquisition, or rehabilitation of qualified low income buildings, regardless of whether those buildings have tax credit allocations. Sub-awards may be structured as loans or grants. If a project does not have a tax credit allocation, the agency must determine that using such funds for the project will nonetheless "increase the total funds available to the state to build and rehabilitate affordable housing". In making such a determination, state credit agencies must establish a process that demonstrates good faith efforts (by parties with LIHTC allocations) to secure commitments for tax credits from private investors. The sub-awards will be subject to IRC Section 42 rent and income limitations, and use requirements, but will not reduce eligible basis.

The formula by which the Treasury will calculate the allowable grant amount to a state agency is:

85% of the product of: ((a) 40% of a state's 2009 volume cap credit amount, and 40% of any amount the state received from the national pool, plus (b) 100% of any credits returned in 2009, and 100% of any unused 2008 credits) multiplied by 10.

Additional Funds to Public Housing Agencies

Two billion dollars will be allocated to provide ongoing Section 8 project-based rental assistance with an additional $250 million to be funded as grants or loans to existing Section 202, Section 811 and Section 8 projects for energy retrofit and green investments in those projects.

Four billion dollars will be allocated as capital funds to public housing agencies. Three billion will be allocated to housing authorities in accordance with the existing capital fund formula, and $1 billion will be allocated to housing authorities on a competitive basis for projects that leverage private sector funding or for financing renovations and energy conservation retrofit investments. HUD must commit the competitive allocation by September 30, 2009.

Increased Funding For New Markets Tax Credit Program

ARRA allocates an additional $3 billion to the NMTC Program, to be divided evenly between 2008 and 2009 allocation rounds. 2008 applicants who applied for, but did not receive, an allocation will be eligible for some of the $1.5 billion dedicated to the 2008 round. On March 18, 2009, the CDFI Fund released its Recovery Act Implementation Plan urging those 2008 applicants who did not receive an allocation to maintain current contact information on their CDFI Fund account, as those applicants may be contacted to determine whether there have been any material changes to their application.

The American Reinvestment and Recovery Act provides broad authority to implementing agencies to disburse and allocate the new funds described herein. As more of the policies are implemented, we expect the implementing agencies, such as HUD, state housing credit agencies (including the Georgia Department of Community Affairs ("DCA"))*, and the CDFI Fund, to begin to elaborate on the how the various programs will be administered. For additional information and more specific details about the initiatives discussed herein, please contact one of AGG's Housing Finance and Community Development team members.

* DCA held a public forum on March 18th to elicit comments and discussion on proposed uses of TCAP and LIHTC Exchange funds made available under ARRA. At the forum, DCA indicated that it was awaiting further guidance from HUD and Treasury before it could make any final determinations on the use of these funds. DCA also announced that it has posted a survey on its website to be completed by potential applicants for ARRA funds. According to DCA, the survey is primarily intended for projects that were previously awarded credits and have been unable to find a syndicator or need gap financing. Developers that have projects that are currently on DCA's 2008 waiting list (for a LIHTC award) are also encouraged to complete the survey. Additionally, DCA is encouraging developers with proposed tax exempt bond projects that can be ready to start construction by July 1st, to complete the survey.