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Housing and Economic Recovery Act of 2008

On July 30, 2008, President Bush signed into law significant changes to the Low-Income Housing Tax Credit program as part of the Housing and Economic Recovery Act of 2008 (the “Act”). We have highlighted significant features of the Act below:

- **Modified Definition of “Federally Subsidized Building”**: Projects receiving below-market financing from HUD will no longer be restricted to 4% (or 30% present value) credits, giving state housing agencies the flexibility to provide 9% (or 70% present value) credits to these projects. Currently, buildings that are “federally subsidized” are limited to a 4% credit and are not eligible for 9% credits. The Act has revised the definition of “federally subsidized” to cover financing through tax-exempt bonds, only, and to exclude “any below market Federal loan”.
- **Section 8 Project-Based Assistance**: The Act (i) increases the maximum Section 8 voucher contract to a 15-year term (an increase from 10 years) and provides for 15-year renewal terms, subject to availability of appropriated funds, (ii) allows project-based voucher rents in Tax Credit projects to reach the maximum voucher rent, even if above the Tax Credit ceiling, and (iii) eases the restriction on use of project-based vouchers to 25% of the units in a *project* (i.e., including multiple buildings) rather than in a *building*.
- **McKinney-Vento Shelter-Plus-Care**: The Act extends completion deadlines of Shelter Plus Care projects using Tax Credits to 60 months (from 12 months) and authorizes 15-year contract renewal terms, subject to availability of appropriated funds.
- **Carryover Allocation**: Developers now have 12 months after receiving a Tax Credit allocation to incur 10% of reasonably expected basis (rather than incurring such costs within the later of six months or the end of the allocation year).

The changes described above apply to buildings placed in service after July 30, 2008. Therefore, projects that have already received Tax Credit allocations but have not yet been placed in service may benefit from the Act. The statute may be found under 110 P.L. 289 (<http://www.govtrack.us/congress/billtext.xpd?bill=h110-3221>).

This alert is meant to provide general information only, not legal advice. The foregoing is a summary of the highlights of the Act. In order to fully understand the Act, please refer to the text of the Act or contact us. Please contact Hedwig O’Hara at (212) 219-1800 ext. 226 or Gail Bayarin at ext. 279 if you have any questions about this alert.

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