

## Legal Alert: American Recovery and Reinvestment Act

**March 2, 2009**

On Tuesday, February 17, 2009, President Barack Obama signed into law the \$787 billion American Recovery and Reinvestment Act (ARRA). The ARRA is primarily comprised of appropriations and tax provisions, but also includes more specific provisions that assist the unemployed, enhance COBRA benefits, improve Medicare and Medicaid health information technology, assist with state fiscal relief, expand broadband technology opportunities, and impose executive compensation limits.

The ARRA contains numerous provisions that are noteworthy for real estate, construction and environment-related industries, including grants for construction and maintenance of public facilities and infrastructure, direct grants to the states for infrastructure projects, housing and other real estate incentives, and tax benefits and grants to encourage the production or enhancement of energy efficiency, including construction or retrofitting to meet the standards of high-performance green buildings. The most significant of these provisions are summarized below. It should also be pointed out that the ARRA consistently shows a preference for projects that are ready to be implemented immediately, or at least in the very near future.

### Housing

- Extension of the first-time home buyer credit established in 2008 to homes purchased through November 30, 2009, increase of the maximum credit to \$8,000 and elimination of the repayment requirement unless homes are resold within three years of purchase.
- \$2 billion for the redevelopment of abandoned and foreclosed homes.
- \$2.25 billion for capital investments in low-income housing tax credit projects.
- \$2.25 billion to owners of properties receiving project-based assistance, \$250 million of which is specifically set aside for grants or loans for energy retrofits and green investments.
- \$4 billion for the Public Housing Capital Fund.
- More than \$13 billion for direct loans and guarantees on loans for rural housing, business, utilities, water and waste disposal.
- \$510 million for Native American housing block grants.
- \$1 billion to the Community Development Fund.

### Infrastructure

- \$1.5 billion in transportation infrastructure grants to state and local governments and transit agencies for roads, bridges, rail and ports.
- \$27.5 billion to the Federal Highway Administration to be passed on to the states for restoration, repair and construction of infrastructure projects.
- \$8 billion to the Federal Railroad Administration to be passed on to the states for high speed and intercity passenger rail service projects.
- \$8.4 billion to the Federal Transit Administration for various discretionary grants to the states.
- \$7.2 billion to increase access to broadband technology and encourage investment in broadband technology in rural areas.
- \$305 million to the Bureau of Land Management for management of lands and resources and construction and repair of roads, bridges, trails and facilities, including energy efficient retrofits of existing facilities.
- \$450 million to the Bureau of Indian Affairs for construction of roads, schools and detention centers.

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### Energy Efficiency and Green Building

- \$2.1 billion for the Corps of Engineers to be used on construction and the Formerly Utilized Sites Remedial Action Program.
- \$1 billion to the Department of the Interior Bureau of Reclamation for water and related resources.
- Various grants to the Department of Energy, including \$16.8 billion for research into renewable resources, \$4.5 billion to modernize the energy grid, \$3.4 billion for research into the development of fossil fuels, \$483 million for non-defense-related environmental cleanup, \$5.127 billion for defense-related environmental cleanup, \$390 million for uranium decontamination and decommissioning, \$400 million for advanced energy research projects and \$6 billion toward guaranteeing Innovative Technology Loans.
- \$600 million toward the EPA's Hazardous Substance Superfund, and \$200 million more for the Leaking Underground Storage Tank Trust Fund Program.
- \$6.4 billion for EPA grants to the states, which includes \$4 billion for the Clean Water State Revolving Funds (20% of which is specifically for projects that address green infrastructure, water or energy efficiency, or other environmentally innovative techniques), \$2 billion for grants under the Safe Drinking Water Act, \$100 million for Brownfields projects and \$300 million for grants under the Diesel Emission Reduction Act.
- Extension of the time in which a qualifying wind facility must be placed in service in order to obtain the available renewable energy production tax credit through December 31, 2012. Extension of the time in which the following must be placed in service in order to obtain the available renewable energy production tax credit through December 31, 2013: closed- and open-loop bio mass facilities, geothermal or solar facilities, landfill gas facilities, trash combustion facilities, hydropower facilities and marine and hydrokinetic facilities. Companies eligible for the renewable energy production tax credit may instead elect the investment tax credit. Repeal of the limitation on the renewable energy production tax credit for small wind energy property and of the reduction of basis on property financed by subsidized energy financing.
- Increase of the limitation on clean renewable energy bonds by \$1.6 billion to be allocated among government bodies, public power providers, electric cooperatives. Increase on the limitation on qualified energy conservation bonds by \$2.4 billion to be allocated to government bodies for projects and initiatives that reduce pollution and energy consumption and increase energy efficiency and the commercialization of green building technology.
- Increase of the allowable credit for qualified energy efficiency improvements to residential property to 30% of the amount of the expenditures up to \$1,500 and modification of the standards for what is "qualified." Elimination of the maximum credit on residential solar electric, solar water heating, geothermal heat pump and small wind energy expenditures.
- Increase of the available credit for an alternative fuel vehicle refueling property from 30% to 50% of the cost of the property with a new cap of \$50,000 instead of \$30,000. For refueling property that relates to hydrogen, the credit remains at 30% but with the cap increased to \$200,000. The credit for property owned by individuals is increased from \$1,000 to \$2,000.

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- Earmarks specifically for energy efficiency and green building initiatives in grants for the Federal Buildings Fund (\$4.5 billion to convert General Services Administration facilities into high-performance green buildings), military facilities (energy conservation projects), the Bureau of Land Management and the National Park System (energy efficient retrofits), properties receiving project-based assistance (grants or loans for energy retrofits and green investments) and school renovations (modernizations consistent with a recognized green building rating system).

### **Public Facilities Construction**

- A total of \$48.1 billion for allocation to the states to be administered by the Department of Education. The majority of this \$48.1 billion is for education programs and services, but 18.2% of each state's allocation is for public safety and other government services, which can be used for the modernization, renovation and repair of public school and post-secondary facilities, including those that are consistent with a recognized green building rating system.
- A combined \$200 million for Department of Agriculture and Agricultural Research Service construction, repair and maintenance of buildings and facilities.
- A combined \$340 million for watershed rehabilitation and flood prevention through the purchase and restoration of flood plain easements.
- Over \$1.3 billion for facilities construction for the National Science Foundation, the National Institute of Standards and Technology and the National Oceanic and Atmospheric Administration.
- \$4.24 billion to improve, repair and modernize military facilities, to improve and restore real property to include barracks, and to invest in the energy efficiency of facilities for the various branches of the military.
- \$2.88 billion for other military construction across the various branches, including child development centers, warrior transition complexes, troop housing, energy conservation projects, hospitals, family housing, and the Homeowners Assistance Fund.
- \$1.2 billion to Veterans Affairs for construction, remodeling and maintenance of medical facilities, national cemeteries and state extended care facilities.
- A total of \$5.55 billion for the Federal Buildings Fund, which includes at least \$750 million for Federal buildings and United States courthouses, at least \$300 million for border stations and ports of entry, and \$4.5 billion to convert General Services Administration facilities into high-performance green buildings.
- \$420 million toward construction related to the U.S. Customs and Border Protection.
- \$98 million for acquisition, construction and improvement of Coast Guard facilities and \$142 million toward the alteration or removal of obstructive bridges.
- \$210 million to modify, upgrade or construct non-federal fire stations.
- \$280 million to the United States Fish and Wildlife Service for resource management and construction.
- \$735 million to the National Park System for operations, construction of facilities, road repairs and energy efficient retrofits.
- \$140 million to the United States Geological Survey for construction and restoration of facilities.
- Over \$1 billion combined for the construction and maintenance to the Forest Service, Indian Health Facilities and the Smithsonian Institution.
- \$2.5 billion for Health Resources and Services, with \$1.5 billion set aside for construction, renovation, equipment and for the acquisition of health information technology systems.

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- \$1.5 billion to the National Institutes of Health for the construction, renovation and repair of non-federal research facilities and other high-priority facilities.
- \$90 million to the Department of State for urgent domestic facilities requirements.
- \$220 million for construction related to the water quantity program at the U.S. – Mexico border.
- \$200 million to the Federal Aviation Administration for facilities and equipment.

*Nothing in this alert is intended to be legal advice. Please consult with counsel of your choice with regards to any specific questions you may have.*

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