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TO: COMMISSIONERS

FROM: COMMISSION STAFF

DATE: JULY 23, 2024

RE: Request for Exemption Pursuant to POL § 73(8-b):

- [REDACTED] (HOMES AND COMMUNITY RENEWAL)

BACKGROUND

This is a request from the New York State Housing Finance Agency (HFA) and the State of New York Mortgage Agency (SONYMA), both of which are hosted under the umbrella of New York State Homes and Community Renewal, for an exemption from the post-employment restrictions, pursuant to Public Officers Law § 73(8-b), allowing the agency to contract with [REDACTED], former Senior Associate Counsel, to render services to the agency. A letter in support of the request from Commissioner/CEO RuthAnne Visnauskas is attached hereto.

[REDACTED] retired from her position as [REDACTED] in the HFA/SONYMA legal department in December 2023, after 25 years of service. [REDACTED] responsibilities had focused on transaction practice including the negotiation, documentation and closing of the HFA bond financed multi-family housing projects and the post-closing asset management issues related to those projects. [REDACTED] was in part responsible for the supervision and management of the HFA transactional attorneys.

HFA/SONYMA would like [REDACTED] to provide consulting and legal services focusing on (a) HFA bond financed multi-family "80/20" housing projects coming back to the Agency for bond redemptions and transaction modifications, (b) potential loan restructuring or work out for certain projects, and (c) consult on certain bond financing structures. It is noted that the

HFA currently is not financing new “80/20”¹ projects, and among the HFA attorneys there is very limited experience with the “80/20” structure and with certain related bond financing structures.

Commissioner/CEO Visnauskas has certified to this Commission that [REDACTED] has a unique combination of expertise, knowledge, and experience with respect to bond-financed multi-family housing projects, and that the HFA has been unable to identify an alternative candidate at a comparable cost. HFA has reportedly been actively recruiting lawyers to fill vacancies and enhance legal staff to meet the state’s housing goals. A new attorney joined this team in May and additional candidates are moving through the hiring process. The HFA is actively posting all open positions, including the senior positions on its website and additional sites. Given current market conditions, as well as the competition the HFA faces in terms of salary levels for senior attorney roles, the HFA foresees that recruiting attorneys, particularly for senior roles requiring deep experience, will take time.

The HFA/SONYMA seeks permission to engage with [REDACTED] for a period of six months at a rate of \$190/hour, for a total contract amount not to exceed \$90,000. [REDACTED] annual compensation at retirement was \$201,711.

LEGAL FRAMEWORK

Pursuant to Public Officers Law § 73(8-b), the Commission on Ethics and Lobbying in Government is authorized to grant exemptions to the post-employment restrictions contained in Public Officers Law § 73(8)(a) in order to permit an agency to contract with a former employee. Specifically, Public Officers Law § 73(8-b) allows for such an exemption when “the agency head certifies in writing to the Commission that such former officer or employee has expertise, knowledge or experience with respect to a particular matter which meets the need of the agency and is otherwise unavailable at a comparable cost.”

Since the provision became law in 2004, the State Ethics Commission, the Commission on Public Integrity, and the Joint Commission on Public Ethics have required requesting agencies to provide and demonstrate the following:

1. The request must be in writing and signed by the head(s) of the agency(ies);
2. The request must name the specific former officers or former employees to be exempted;
3. The request cannot be open-ended, but must be for a specific period of time;
4. The request must provide sufficient information to establish that the former employee possesses expertise, knowledge, or experience in a particular matter; institutional or general knowledge about the agency is insufficient;

¹ The 80/20 Program provides low-interest financing to multifamily rental developers who commit to designating at least 20 percent of a development’s units to low-income households. See <https://www.osc.ny.gov/state-agencies/audits/2017/05/31/8020-housing-program> (last accessed 7/17/2024).

5. The request must include sufficient information to establish that the agency has made inquiries as to the availability of comparable services and the cost of such services;
6. The former employee's compensation must be commensurate with the former employee's salary while in State service;
7. The request must provide sufficient information to establish that the agency has not contributed to creating the situation in which the former employee's services are now required – i.e., that it has taken steps to replace the former employee; and
8. The exemption, if granted, will be for no longer than a time period necessary to enable the agency to find other means to obtain the required services.