



Multifamily Housing Notice 08-10

September 11, 2008

To: Developers, Sponsors and Local Housing Contacts
From: Patricia Rynn Sylvester, Director, Multifamily Housing
Re: **Revisions to the Qualified Allocation Plan and Multifamily Rental Financing Program Guide for the Housing and Economic Recovery Act of 2008, HR 3221**

Revisions to Maryland Qualified Allocation Plan (QAP) and Multifamily Rental Financing Program Guide (Guide) for December 2008 Round

Passage on July 30, 2008 of The Housing and Economic Recovery Act of 2008, H.R. 3221, requires DHCD to make some changes to its Qualified Allocation Plan. DHCD has reviewed the new legislation in internal meetings and with legal counsel to determine what provisions must be implemented immediately and which may be implemented administratively without changes to the QAP. DHCD's focus has been to implement a new QAP as soon as practicable for proper guidance to Sponsors that wish to participate in the Fall 2008 competitive funding round (application deadline of December 16, 2008). Therefore based on the tight timeframe, the proposed changes to the Maryland QAP and Guide are only those that are required according to the new law or changes that are necessary as a result of the new law's affect on the existing QAP.

A summary of the proposed revisions is provided below. However please be sure to review the actual changes by clicking on the following links for the draft QAP and Guide documents:

[October 2008 Draft Qualified Allocation Plan](#)

[October 2008 Draft Multifamily Rental Financing Program Guide](#)

A public meeting to discuss the proposed changes and solicit input will be held at DHCD from 10am to 11am, Friday, September 19, 2008, First Floor, Auxiliary Conference Room, 100 Community Place, Crownsville, MD 21032.

Proposed Schedule to Implement 2009 QAP and Guide:

- Week of Sept 8: Post initial Notice of Meeting and Proposed Changes
- September 19: Public meeting
- Week of Sept 22: Official Public Hearing Notice Published
- Week of Oct 6: Public Hearing held and all comments due
- Week of Oct 13: Final 2009 QAP and Guide sent to Governor for signature

Summary of Proposed Changes to the Maryland Qualified Allocation Plan and Multifamily Rental Housing Financing Guide as a result of The Housing and Economic Recovery Act of 2008, H.R. 3221

1. State Designated DDA -- 30% Boost for Low Income Housing Tax Credit Eligible Basis.

HR 3221 adds a third type of high-cost area eligible for a 30% tax credit basis increase (the "Basis Boost"). This addition includes any building designated by the Agency that needs the "Basis Boost" for the building to be financially feasible. The enhanced credit does not apply to tax-exempt bond deals. Agencies appear to have great latitude in implementing the State Designated DDA. There is no provision within the Code that requires the Agency to amend the Qualified Allocation Plan ("QAP") to provide requirements/qualification for the "Basis Boost." However, DHCD proposes to amend its QAP as shown below. The state "Basis Boost" will not be used in conjunction with projects taking the basis boost associated with the HUD designated Qualified Census Tracts or Difficult to Develop Areas. Equity from the state "Basis Boost" will not be counted as leveraged funds for scoring in the Leveraging section of the Guide.

Recommendation:

Amend Section 3.7.3 of the 2008 *Multifamily Rental Financing Program Guide* by adding:

3.7.3.4 State 30% Basis Boost

As authorized by and to the extent permitted by Section 42(d)(5)(C)(v) of the Internal Revenue Code, enacted by “The Housing and Economic Recovery Act of 2008”, HR 3221, the Department may increase or “boost” the eligible basis of projects by up to 30% if the Department determines that the project or a building in the project needs the “Basis Boost” to be financially feasible. In making this determination, the Department will consider:

(a) the impact of the additional “Basis Boost” on a project’s need for Rental Housing Funds (RHF) and its financial feasibility;

(b) whether the project will receive points under Section 4.2.2.B by committing to rent at least 10% of its units to households with incomes of 30% or less of the area median income; or

(c) whether the project will be owned in whole or in part by a public housing authority or a local government.

The Department may make a determination that a project is eligible for the “Basis Boost” described above on its own initiative at any time, based upon review of the project’s sources and uses, or upon request of the Applicant. An Applicant’s request should be submitted at least 30 days in advance of the Competitive Round deadline and include documentation and certification that the “Basis Boost” is needed in order for the project to be financially feasible. Sections 3.7.2 and 3.7.3.1 concerning the maximum limits for Rental Housing Funds and Tax Credits continue to apply to projects receiving a basis boost under this section, unless the department uses its discretion under Section 3.7.3.3.

2. Requirement to consider “historic nature” and “energy efficiency” in allocating housing tax credits.

HR 3221 requires states to add “historic nature” and “energy efficiency” to the required QAP list of considerations for allocating tax credits. The criteria for these must be in place for the 2009 QAP. HR 3221 does not provide any requirements with respect to either of these additional considerations. The existing QAP and Guide include energy efficiency in the allocation process, but the historic significance of buildings in applications has not been prominent although there have been additional points for projects located in “certified heritage areas” and federal historic tax credit equity has been assumed to be leveraged funds for the Leveraging scoring section. DHCD has determined that a QAP change is necessary to comply with the historic nature requirements of the new law.

Recommendation:

Amend Section 4.6.1 of the 2008 *Multifamily Rental Financing Program Guide* by adding:

Historic Nature Leveraging and Bonus Points

Equity from the Federal Historic Preservation Tax Credit is considered leveraged funds for this leveraging calculation. A project that commits to apply for the Federal Historic Preservation Tax Credit will receive 2 “Historic Nature” bonus points in this category by: 1) including federal historic tax credit equity in the development budget; 2) including in the Department funding application evidence that the Historic Preservation Certification Application, Part I – Evaluation of Significance, has been submitted to the Maryland Historical Trust (for review and forwarding to the National Park Service); and 3) certifying that the project will complete the entire Federal Historic Preservation Tax Credit application process and pursue the sale of these tax credits. The total points available in this Section 4.6.1 will not exceed 20 points.

3. Timeframe for Meeting 10% Test.

HR 3221 allows a developer to meet the 10% test no later than 12 months after the allocation date and allows States to set a more stringent requirement. Prior federal law required the test to be met at the later of 6 months or the end of the calendar year after the allocation is made. Maryland’s QAP requires the test to be met 5 months after the allocation is made with the opportunity for the developer to request an extension to go to the federal timeframe. Timeframes shorter than those required by the law allow some time for unforeseen delays in the development process.

Recommendation:

Amend the 2008 *Qualified Allocation Plan* and the *Multifamily Rental Financing Program Guide* as follows:

Require developers to meet the 10% test no later than 10 months after the allocation date with the ability to request an extension to go to the federal timeframe with CDA prior approval and at a cost of \$1,000 per month of the extension.

4. Annual Recertification Exception for 100% Tax Credit Projects.

The Code requires owners of tax credit properties to complete an annual income recertification for all tenants residing within low-income eligible units. IRS Revenue Procedure 1994-64 previously provided that owners of 100 % qualified residential rental properties may request IRS approval of a waiver of the certification requirement with the consent of the state monitoring agency. HR 3221 eliminates the annual tenant income recertification for 100 percent qualified unit developments. However, State monitoring agencies may impose more stringent requirements.

Recommendation:

Retain the annual income recertification requirement for 100% qualified residential rental properties and allow a waiver of the requirement by amending the Review section under Project Monitoring in the *2008 Qualified Allocation Plan* as follows:

To apply for this waiver, the owner must submit evidence to CDA that the property meets the following: 1) the property must have 100% low income housing tax credit units; 2) the property must not have any other financing which requires annual tenant income certifications; 3) the request must be submitted no earlier than the end of the second year after the last building in the project has been placed in service; 4) the request must be submitted after the completion of CDA's first on-site physical inspection and file review; 5) the property must not have any outstanding or uncorrected issues of non compliance; and 6) the owner must certify that all residents were eligible for occupancy as defined by Section 42 of the Code subsequent to a full independent review of all resident files.

The waiver takes effect on the date the CDA approves the waiver. The waiver will be effective for each household in the project beginning with the second annual recertification. The owner must complete the initial certification and the first annual certification prior to implementation of the waiver. Once the waiver takes effect for a specific household, the owner must obtain an annual household self declaration of income which will not require verification.

5. Fix the Applicable Percentage at 9%.

HR 3221 allows newly constructed non-federally-subsidized buildings (including rehabilitation expenditures) placed in service after 7/30/08 and prior to 12/31/13 to have an unadjusted applicable percentage of 9% rather than choose a monthly applicable percentage as set forth under the current law. It will not be clear until regulations are published whether the new law overrides the old prohibition against rescinding an applicable percentage rate lock once it has been made. CDA will not increase current reservations or allocations based on the new law. For projects that have already locked their applicable percentage credit rate, but have not been placed in service, CDA may agree that the project can assume the fixed 9% rate if the locked rate and current eligible basis do not support the current reservation or allocation amount. In this circumstance, CDA may require the Sponsor to show preparedness for filling a potential financing gap, if at the time the 8609s are issued, the regulations require the locked rate to be used.

Recommendation:

Amend the *2008 Qualified Allocation Plan* under Tax Credit Rates as follows:

For New Construction or Substantially Rehabilitated Building Costs that will be placed in service after July 30, 2008 and before December 31, 2013 the Binding Agreement and Election Statement is required to be notarized and filed with CDA no later than the 25th day of the month of the Carryover Allocation locking the applicable percentage of 9% in accordance with §42(b)(2) of the Code.

For all other projects, costs associated with the acquisition of existing buildings and tax credits receive with tax-exempt bond financing, the manner for locking in the applicable percentage will not change from the existing QAP and Guide requirements.

6. Tax Credit Request Limit Increase.

The per project limit on tax credit requests is increased from \$1,000,000 to \$1,200,000. A waiver to go to the \$1,200,000 will no longer be required.

7. Changes to be Implemented Administratively or with Minor QAP Changes.

- 10% Increase in 2008 and 2009 Tax Credit Allocation Authority -*The additional tax credit ceilings will be allocated to projects awarded funds in the Spring 2008 and subsequent rounds.*
- Relaxation of "Taint" for projects receiving HOME funds -*Reviewed in underwriting.*
- Increase in Rehabilitation Expenditure Requirements -*Reviewed during evaluation of tax credit eligibility*

- Increase in allowable community building costs eligible for credits -*Addressed as part of eligible basis determination.*
- Clarification of Treatment of Federal Grants -*Compliance period federal grants are owner issue.*
- Relaxation of 10 year rule for acquisition credits -*Reviewed during initial funding eligibility determination*
- Relaxation of definition of related person for acquisition credits -*Reviewed during evaluation of tax credit eligibility.*
- Removal of Prohibition for HUD Mod Rehab projects to use credits -*Reviewed during initial funding eligibility determination.*
- Relaxation of Bond-posting requirement for owners -*Compliance period matter for owner.*
- Clarification of general public use requirements-*Reviewed during evaluation of tax credit eligibility and during compliance period.*
- Expanding tenant eligibility to include students who formerly were foster care participants - *Reviewed during evaluation of tax credit eligibility and during compliance period.*
- Expansion of income limits for rural areas -*Reviewed in underwriting.*
- Next Available Unit Rule -*Compliance period issue.*

Please remember that we are announcing future round deadlines, significant application changes, bond program amendments and other key dates and facts on our web site and by e-mail only. Please make sure that we have your current e-mail address. Please send any additions or corrections to taxcredits@mdhousing.org or rentalhousing@mdhousing.org as soon as possible.

Thank you for your interest and participation in the multifamily housing programs in Maryland.

For More Information, Contact:

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 410-514-7446, or 1-800-543-4505 (toll free in Maryland, only)

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