



651.296.7608 • 800.657.3769
400 Sibley Street, Suite 300
St. Paul, MN 55101-1998
fax 651.296.8139
tdd 651.297.2361
www.mnhousing.gov

BOARD AGENDA ITEM: 8.D.(1)

DATE: October 23, 2008

SUBJECT: Approval, Preliminary Amended 2009 Housing Tax Credit Qualified Allocation Plan and Procedural Manual

STAFF CONTACT:

Robert Porter, 651-297-5142
robert.porter@state.mn.us

BACKGROUND:

The Federal Tax Reform Act of 1986 created the Housing Tax Credit Program (HTC) for qualified residential rental properties. The Housing Tax Credit Program is the principal federal subsidy contained within the tax law for acquisition/substantial rehabilitation and new construction of low income rental housing.

Section 42 of the Internal Revenue Code (IRC), requires that state allocating agencies develop an allocation plan for the distribution of the tax credits within their jurisdiction. The allocation plan is subject to modification or amendment to ensure the provisions conform to the changing requirements of the IRC and applicable state statute. On July 30, 2008 Congress enacted the Economic and Housing Recovery Act of 2008 (Act). The Act results in a wide variety of important IRC revisions resulting in the most significant changes to the HTC program since its inception. The effective date for these changes is July 30, 2008. The Act increased the per capita housing tax credit amount to be allocated to Minnesota and also included many changes to Housing Tax Credit allocation law (Section 42 of the IRC). At its August meeting, the Board approved of staff holding a formal process including a public hearing to pursue amendment of the 2009 QAP, Procedural Manual and related program documents (QAP) as appropriate to ensure conformance with the Act. Upon final Board approval in December, changes required by the Act will be incorporated into the Minnesota Housing 2009 Housing Tax Credit Qualified Allocation Plan, Procedural Manual and other related program documents (Amended 2009 QAP).

Staff has reviewed the HTC program and is working toward finalizing the necessary modifications. Several of the Act's effective dates not only impact the 2009 HTC program, but also reach back and impact the 2008 HTC program. At its August meeting, the Board approved the Implementation Plan. In part, the Implementation Plan provided for the incorporation of major provisions of the Act into HTC 2009 Round 1. Staff has reviewed the Round 1 proposals and has incorporated the provisions of the Implementation Plan. In

addition, the Implementation Plan identified a temporary increase to the per development credit limit and the provision for a State designated 30 percent basis boost with implementation criteria as items to be incorporated into the Amended 2009 QAP.

Typically with this kind of law change, a longer period is allowed for the changes to be integrated into the program documents of tax credit allocating agencies. This is not the case with the current legislation. Therefore, an expedited process to incorporate these changes is necessary through development of an Amended 2009 QAP for release to the public in early January in time for applications to meet the February 5, 2009 HTC Round 2 application deadline. Staff is pursuing the appropriate revisions to the QAP to ensure conformance with the Act's requirements.

PER CAPITA INCREASE:

The Act provides an increase of twenty cents to the Minnesota per capita housing tax credit allocation for each of years 2008 and 2009, resulting in approximately \$1,000,000 additional credit cap to the state for 2009. Attached is a summary of the results of the increase for 2009 (Attachment A). The additional credits have been incorporated into 2009 Round 1 in accordance with the Implementation Plan.

PROPOSED CHANGES FOR AMENDED 2009 QAP:

Staff has reviewed the content of the Act as it relates to Minnesota Housing's HTC programming and also has met with the HTC Suballocators. Attached is a summary of changes stemming from the Act which will result in changes to Section 42 and a general summary of proposed changes to the Minnesota Housing 2009 QAP (Attachment B).

With the Act being signed into law, the Internal Revenue Service (IRS) will develop regulations and clarifications as necessary for implementation of the Act. The proposed changes amending the 2009 QAP are recommended pursuant to requirements of federal law to incorporate the provisions of the Act. Should additional regulatory guidance or clarification regarding these provisions be provided to Minnesota Housing during the period covered by this Allocation Plan, Minnesota Housing may accordingly modify and supplement the plan.

HEARTLAND DISASTER TAX RELIEF ACT OF 2008

On October 3, 2008 Congress enacted the Emergency Economic Stabilization Act of 2008. A section of this legislation is called the Heartland Disaster Tax Relief Act of 2008.

The disaster relief section of the new law provides additional housing tax credit authority to states with qualifying developments in qualifying counties in several Midwestern Disaster Areas (MDA). It is not known at this time if Minnesota qualifies to receive any additional credit authority from this law. The counties of Cook, Fillmore, Freeborn, Houston and Mower may be qualified. The final list of qualified counties will be issued by the IRS in the near future.

As a result of the disaster relief provisions of the new law, and if the above counties are designated as qualified, it may be appropriate to establish a Temporary Priority in the

Amended 2009 QAP addressing them. Staff is currently reviewing the provisions to form best recommendations. Updates on the new law and any related recommendations will be provided to the Board as part of finalizing the Amended 2009 QAP.

TIMETABLE:

The recommended dates are:

October 23	Board Approval of Minnesota Housing Preliminary Amended 2009 QAP
October 29	Public Hearing on Proposed Amended 2009 QAP
December 18	Board Approval Final Approval of Amended 2009 QAP
January 6 (estimated)	Finalize and distribute Amended 2009 QAP
February 5	HTC 2009 Round 2 Application Deadline

PUBLIC HEARING

The Omnibus Budget Reconciliation Act of 1989 (OBRA) requires that Housing Tax Credit Allocating Agencies develop a plan for allocating tax credits within their jurisdiction. The plan must establish criteria to determine priorities for selection of developments to receive tax credits. The OBRA also requires tax credit agencies to hold public hearings to solicit public comments on allocation plans. Minnesota Housing will hold its public hearing on Wednesday October 29, 2008. Following the hearing a final report on the Amended 2009 QAP will be prepared and presented for Minnesota Housing Board approval.

The public hearing, production of the Amended 2009 QAP revisions, including Board final approvals, Governor’s approval and public distribution must be accomplished prior to staff processing HTC 2009 Round 2 applications. The application deadline is February 5, 2009.

Following the Board approval of the Implementation Plan in August, a general summary of the provisions of the Act and the Implementation Plan was made available to interested parties via Minnesota Housing’s web site and other notices. Additional information on the proposed changes for the Amended 2009 QAP will be made available to the public for review and comment prior to the October 29th public hearing. Staff will review the public hearing comments and, as appropriate, incorporate them into the report for final approval of the Amended 2009 QAP. The Board will review revisions as proposed for the final Amended 2009 QAP at its meeting on December 18. Upon obtaining final Board approval of the Amended 2009 QAP, it will be made available to the public, interested parties and Round 2 applicants.

RECOMMENDATION:

Staff recommends approval of the Preliminary Amended 2009 QAP.

ATTACHMENTS:

A and B

Attachment A

ADJUSTED PER CAPITA DISTRIBUTION DETAILS	INITIAL 2009	\$.20 PER CAPITA ADD	NEW 2009
GREATER MINNESOTA			
Duluth	\$272,775	\$28,904	\$301,679
St. Cloud	\$148,969	\$15,785	\$164,754
Rochester	\$213,053	\$22,575	\$235,628
Rural Dev.(RD)/Small Projects Set-Aside (MHFA Admin.)	\$200,000	\$0	\$200,000
MHFA Administered	\$2,720,376	\$288,254	\$3,008,630
METROPOLITAN AREA			
Minneapolis	\$1,182,151	\$118,215	\$1,300,366
St. Paul	\$881,102	\$88,110	\$969,212
Washington County	\$454,762	\$45,476	\$500,238
Dakota County	\$839,918	\$83,992	\$923,910
MHFA Administered	\$2,442,612	\$244,261	\$2,686,873
NONPROFIT SET-ASIDE ADMINISTERED BY MHFA			
Metropolitan Area	\$644,504	\$64,451	\$708,955
Greater Minnesota Area	\$395,020	\$39,501	\$434,521
TOTAL TAX CREDITS FOR STATE	\$10,395,242	\$1,039,524	\$11,434,766

Attachment B

Summary of Required Revisions Stemming from the Act and Implementation Plan

Recommended Changes to the 2009 QAP

Per Capita Increase

The Housing and Economic Recovery Act of 2008 (Act) provided Minnesota with an additional twenty cents per capita of housing tax credits for 2009. This results in additional tax credits of approximately \$1,000,000.

Recommendation:

Staff recommends that the Board give approval to staff to amend the QAP as appropriate to reflect the per capita increases provided by the Act.

Regulatory Changes

(These regulatory changes will be generally incorporated as appropriate into the Qualified Allocation Plan, Tax Credit Program Procedural Manual, Self-Scoring Worksheet and related forms and attachments. Some items may also be cited in specific document detail sections below.)

- a. Reflect the 20-cent per capita housing credit cap increase for 2008-2009.
- b. Make revisions as appropriate to conform with the permanent repealing of the Alternative Minimum Tax on housing credits for buildings placed in service after December 31, 2007.
- c. Set the 70 percent present value (9 percent) credit applicable percentage at the greater of current law or 9 percent, with a sunset date of December 31, 2013, effective for buildings placed in service after July 30, 2008 (date of enactment of the Act).
- d. Eliminate below-market federal loans from the definition of federally subsidized properties, allowing the 9 percent credit on all federally subsidized properties, except for tax-exempt bond financed properties, effective for buildings placed in service after date of enactment.
- e. Clarify that the eligible basis of a building shall not include any costs financed with the proceeds of a federally funded grant, effective for buildings placed in service after date of enactment.
- f. Eliminate the prohibition on the 30 percent basis boost for HOME-assisted properties in qualified census tracts (QCT) or difficult development areas (DDA), effective for buildings placed in service after date of enactment.

- g. Provide for a 30 percent State designated basis boost and establish criteria pursuant to the Implementation Plan for buildings placed in service after date of enactment.

It is the goal of the Agency to optimize the use of all available sources of funding for multifamily developments; including private investor equity, amortizing loans and deferred loans; to produce the maximum number of affordable rental units in the most sustainable, quality, cost effective and geographically diverse developments possible which meet the Agency's strategic priorities. Consistent with this goal, the following criteria will be used to determine if, when, and in what amount, the Agency will provide a basis boost for housing tax credit developments on a building by building basis to obtain financial feasibility.

1. Development must meet state identified housing priorities as evidenced by competitive tax credit score.
 2. Funding gaps remain for top ranking tax credit developments.
 3. Credits allocated in connection with the basis boost shall be no more than needed to achieve financial feasibility.
- h. Clarify the general public use test to explicitly allow credit developments that establish tenancy restrictions for persons with special needs, tenants who are involved in artistic or literary activities, and persons who are members of a specified group under a Federal or state program or policy that supports housing for such a specified group, effective for buildings placed in service before, during, and after date of enactment.
 - i. Make revisions as appropriate to conform with the repealing of the housing credit ten-year (anti-churning) rule for acquisition of housing credits for projects currently subsidized pursuant to certain specified HUD and USDA housing programs and similar state assisted programs, effective for buildings placed in service after date of enactment. Programs included are HUD Section 8, Section 221(d)(3), Section 221(d)(4), Section 236, and USDA Section 515 and any other housing program administered by HUD or the Rural Housing Service of the Department of Agriculture.
 - j. Make revisions as appropriate to conform with the modification of HUD's income limit methodology for calendar years after 2008 to require HUD to increase applicable area median incomes by the amount area median incomes rise, even if the HUD-determined area median incomes would be frozen under HUD's 2007 and 2008 income limit methodology.
 - k. Factor the energy efficiency and historic nature of a project into the selection criteria of the QAP, effective for allocations made after December 31, 2008.
 - l. Make revisions as appropriate to conform with the modification of the housing credit student rule to make children who received foster care assistance eligible for housing credit apartments, effective for determinations after date of enactment.

- m. Make revisions as appropriate to conform with the revision to the definition of area median income in rural areas as the greater of the area median income and the national non-metropolitan median income, effective for income determinations made after date of enactment, applicable only to 9 percent credit developments.
- n. Increase the minimum rehabilitation threshold for acquisition/rehabilitation credit developments to the greater of 20 percent of eligible basis and \$6,000 per unit, effective for housing credit allocations made after date of enactment for non-bond-financed developments and effective for bonds allocated after date of enactment for bond-financed developments. Adjust per unit limit for inflation in future years.
- o. Make revisions as appropriate to accommodate the expansion in the allowable basis for community service facilities located in qualified census tracts. Increase the allowable basis from 10 percent of eligible basis to 25 percent of the first 15 million of eligible basis plus 10 percent of additional basis, effective for buildings placed in service after date of enactment.
- p. Make revisions as appropriate to conform with the revision of the housing credit related party rule restricting investment in properties owned by related parties, effective for buildings placed in service after date of enactment. Expand allowable related party interest to 50 percent from 10 percent.
- q. Allow housing credits on properties financed with HUD's Section 8 Moderate Rehabilitation program, effective for buildings placed in service after date of enactment.
- r. Extend the time developers have to meet the 10 percent carryover allocation test to one year from allocation, effective for buildings placed in service after date of enactment.
- s. Make revisions as appropriate to conform with the elimination of the annual income recertification requirement for 100 percent qualified unit developments, applicable for years ending after the date of enactment.
- t. Make revisions as appropriate to conform with the repealing of the housing credit recapture bond rule, effective for future dispositions and past dispositions if: a) it is reasonably expected the building will continue to be operated as a qualified low-income building; and b) the taxpayer elects to be subject to the new longer statute of limitations.
- u. Make revisions as appropriate to conform with the exclusion of military employees' basic allowance for housing from the definition of income if they are housed in a building located in a county with a military base that had its population grow by 20 percent or more between December 31, 2005 and June 1, 2008, or any county adjacent to such a county. Applies to new and existing 9 percent credit buildings for determinations made after date of enactment and before January 1, 2012.

Recommendation:

Staff recommends that the Board give approval to staff to amend the QAP as appropriate to ensure conformance with the Housing and Economic Recovery Act of 2008 (Act).

State of Minnesota Housing Tax Credit 2009 Qualified Allocation Plan:

- a. Revise Federally Assisted Unit definition to Federally Assisted Building and conform content to provisions of the Act.
- b. Revise Article 8.2 to temporarily increase the per development tax credit limit to \$1,000,000 pursuant to the Implementation Plan.

Recommendation:

Staff recommends that the Board give approval to staff to amend the State of Minnesota Housing Tax Credit 2009 Qualified Allocation Plan document as appropriate to:

- Revise Article 1.4 to reflect the above definition change/clarification as provided by the Act.
- Revise Article 8.2 to temporarily increase the per development tax credit limit to \$1,000,000.

Self-Scoring Worksheet: (Selection Priority)

- a. Increase the minimum rehabilitation threshold for acquisition/rehabilitation credit developments to the greater of 20 percent of eligible basis and \$6,000 per unit in the Strategically Targeted Resources section of the HTC 2009 Self-Scoring Worksheet.
- b. Add historic tax credits as a selection criteria/selection priority item in the Regulatory Cost Avoidance/Cost Reduction section of the HTC 2009 Self-Scoring Worksheet.

Recommendation:

Staff recommends that the Board give approval to staff to amend the HTC 2009 Self-Scoring Worksheet of the 2009 QAP as appropriate to:

- Revise Selection Priority #3 to increase the minimum rehabilitation threshold for acquisition/rehabilitation credit developments to the greater of 20 percent of eligible basis and \$6,000 per unit.
- Revise Selection Priority #7 to add historic tax credits as a selection criteria/selection priority item.

2009 Housing Tax Credit Design Standards

- a. Incorporate the following under the General Design Requirements of the 2009 Housing Tax Credit Design Standards:
 - All developments must comply with Section 5: Energy Efficiency criteria as contained in the 2007 Enterprise national Green Communities Criteria as amended herewith:
 - New construction - compliance with MANDATORY Criteria 5-1a, 5-2, 5-3a, 5-3b, and 5-4 is required.
 - Rehabilitation – compliance with MANDATORY Criteria 5-1a, 5-2, 5-3a 5-3b and 5-4 is applicable only to those improvements enacted upon at time of rehabilitation. Existing equipment and/or appliances that shall remain (not improved) are exempt from this requirement.
 - Compliance with MANDATORY Criteria 5-1b is not required.

Recommendation:

Staff recommends that the Board give approval to staff to amend the HTC 2009 Housing Tax Credit Design Standards as stated above to conform with requirements of the Act to factor the energy efficiency nature of a project into the selection criteria of the QAP.