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BOARD AGENDA ITEM: 8.D.(1)

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**DATE:** December 18, 2008

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

**STAFF CONTACT:**

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**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 Housing and Economic 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).

An expedited process to incorporate these changes has been required for the development of an Amended 2009 QAP for release to the public in early January in time to meet the February 5, 2009 HTC Round 2 application deadline.

As required by Section 42 of the Internal Revenue Code (IRC), and in response to the Act, Minnesota Housing has prepared an Amended 2009 Qualified Allocation Plan (QAP) that includes the HTC Procedural Manual and program documents. A preliminary summary of proposed changes for the Amended 2009 QAP was provided to the Board in August and October. In August the Board approved the Implementation Plan providing for the

*Minnesota Housing finances and advances affordable housing opportunities for low and moderate income Minnesotans to enhance quality of life and foster strong communities.*

incorporation of provisions of the Act into HTC programming. In August the Board also approved of staff holding a formal process including a public hearing to pursue amendment of the 2009 QAP as appropriate to ensure conformance with the Act. In October the Board approved the Preliminary Amended 2009 QAP and timetable.

Minnesota Housing develops and amends the QAP through a notice and public hearing process pursuant to the requirements of Section 42. On October 6, 2008, Minnesota Housing published a notice of public hearing and solicited public comment. Minnesota Housing staff held the public hearing on Wednesday, October 29, 2008. A summary of the proposed changes was made available to the public in advance of and at the hearing for review and comment. No members of the general public attended the hearing and there were no written comments submitted.

As a result of continued discussions on the Amended 2009 QAP and the Act, staff is recommending one additional revision item. The addition is consistent with the intent of the Act and the substance of revision presented for public hearing. As presented to the Board in August, implementing the provisions of the Act, although greatly beneficial to a development's financial feasibility, may increase a development's potential for additional credits. Staff believes that the number of times a development may need to apply and compete for credits may also increase.

Under the current QAP, a development is limited to receiving only one supplemental /additional credit award. Recognizing the difficulties presented by current market conditions, and also recognizing the Act's intent to allow more credits to reach a development, staff recommends the temporary elimination of the QAP control restricting developments to only one supplemental/additional credit award from Minnesota Housing's administered credit pool. As market conditions improve in future years, this limit would be considered for re-incorporation into the QAP as part of the annual QAP amendment process.

Attachment A describes the proposed revisions and clarifications/additions to the content of the Preliminary Amended 2009 Qualified Allocation Plan and Procedural Manual which was reviewed at the October Board meeting. The Act provides an increase of twenty cents to the Minnesota per capita housing tax credit allocation for 2009, resulting in approximately \$1,000,000 additional credit cap to the state for 2009. Attachment B is the estimated Amended 2009 Distribution of Housing Tax Credits for the state allocating agencies based upon the 20 cent per capita increase provided by the Act. The distribution is based upon the Low-Income Housing Tax Credit-2008 Calendar Year Resident Population Estimates released by the Census Bureau. Determinations of population for any calendar year are made on the basis of the most recent census estimate of the resident population of a state (or issuing authority) released by the Census Bureau before the beginning of such calendar year. These determinations of population are subject to final publications made by the IRS at the beginning of each year.

**TIMETABLE FOR APPLICATIONS:**

**Amended 2009 HTC PROGRAM SCHEDULE**  
(October 2008 to April 2009)

October 23	Board Approval of Minnesota Housing Preliminary Amended 2009 QAP
October 29	Public Hearing on Proposed Amended 2009 QAP
December 18	Board Final Approval of Amended 2009 QAP
January 6	Finalize and distribute Amended 2009 QAP (Tentative date)
February 5	HTC 2009 Round 2 Application Deadline
April 23	Agency Board asked to approve HTC 2009 Round 2 selection recommendations (Tentative date)

**DISCUSSION:**

Upon obtaining final Board approval of the Amended 2009 QAP, program documents and application packets will be edited to final form and made available to the public for use in preparing applications for HTC 2009 Round 2.

**MEETING AGENCY PRIORITIES:**

- End Long-Term Homelessness
- Finance New Affordable Housing Opportunities
- Increase Emerging Market Homeownership
- Preserve Existing Affordable Housing

**RECOMMENDATION:**

Staff recommends the adoption of a motion to approve the Amended 2009 Housing Tax Credit Program Qualified Allocation Plan, Procedural Manual, Program documents and Timetable for Applications.

## Attachment A

### **Amended 2009 Housing Tax Credit Program, QAP and Procedural Manual Proposed Revisions**

As a result of continued discussions on the Amended 2009 QAP and the Act, staff is recommending one additional revision item to those initially proposed.

#### *Additional Items:*

#### **QUALIFIED ALLOCATION PLAN and/or HTC PROCEDURAL MANUAL**

Revise Procedural Manual Chapter 3. L. to temporarily eliminate the paragraph stating "Minnesota Housing permits only one supplemental or additional tax credit allocation award for each development. Awards of additional credits requested as part of a carryover application are not counted against this limit."

##### Recommendation:

Staff recommends that the Board give approval to staff to amend Chapter 3. L. of the Procedural Manual as described above.

**The balance of the proposed changes for the Amended 2009 QAP remain as initially presented at the October Board meeting. These items are as follows:**

#### **Statutory**

No statutory changes are proposed.

#### **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:
  - 1) it is reasonably expected the building will continue to be operated as a qualified low-income building; and
  - 2) 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).

**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/darification 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.

**General Administrative and Clarifications:**

Perform various administrative checks, for spelling, formatting, text and instruction corrections and clarifications within QAP, Manual, Self-Scoring Worksheet, and other 2009 tax credit program related documents.

**Attachment B**

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

**Attachment B**