

2008 Housing and Economic Recovery Act (H.R. 3221)
State Credit Agency Implementation of Multifamily Housing Provisions

The Housing and Economic Recovery Act of 2008, HR 3221 ("The Act") was passed by both the House and the Senate and signed into law by President Bush on 7/30/08 ("Enactment Date"). Below is MHDC's implementation of the multifamily housing provisions related to the federal Low Income Housing Tax Credit and Tax Exempt Bond programs.

HR 3221: Provides a 20-cent per capita Housing Credit cap increase for 2008-2009 and increases the small state minimum by 10 percent for those same years. **(Code §42(h)(3)(I))**

MHDC: Staff recommends the commission approve adding the 20-cent per capita Housing Credit cap increase for 2008-2009 to the amount of 9 percent credits available for reservation in the 2009 NOFA period.

HR 3221: Repeals permanently the Alternative Minimum Tax on Housing Credits for buildings placed in service after December 31, 2007. **(Code §42(I))**

MHDC: No position required.

HR 3221: Sets the 70 percent present value ("9 percent") Credit applicable percentage at the greater of current law and 9 percent, with a sunset date of December 31, 2013, effective for buildings placed in service after date of enactment. **(Code §42(b)(2))**

MHDC: Agrees to set the 9 percent credit applicable percentage at the greater of current law and 9 percent effective for buildings placed in service after the Enactment Date but prior to December 31, 2013. Regardless of the credit percentage, MHDC shall only allocate an amount of credits necessary for the feasibility of the development. Developments that have received a reservation of credits from the 2008 NOFA will not automatically receive an increase in credits.

HR 3221: Eliminates 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. **(Removal of Code §42(i)(2)(D) and (E))**

MHDC: Is eliminating below-market HOME, HOPE VI, and similar federal loans from the definition of federally subsidized properties, allowing the use of 9 percent credits without additional restrictions or reduction of basis as long as the loans have a reasonable expectation of being repaid. This is effective for buildings placed in service after the Enactment Date; however, MHDC is awaiting determination of how to process multi-building properties which had a portion of the buildings placed in service on or prior to the Enactment Date.

HR 3221: Clarifies 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. **(Code §42(d)(5)(A))**

MHDC: Accepts the clarification that the eligible basis of a building shall not include any costs financed with the proceeds of a federally funded grant.

HR 3221: Eliminates 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. **(Removal of Code §42(i)(2)(E)(i))**

MHDC: Shall not prohibit the 30 percent basis boost for properties in QCT or DDA receiving HOME funds loaned at an interest rate below the Applicable Federal Rate, effective for buildings placed in service after the Enactment Date. MHDC shall only allocate an amount of credits necessary for the feasibility of the development. Developments that have already received a reservation of 9 percent credits will not automatically receive an increase in credits.

HR 3221: Authorizes allocating agencies to award a 30 percent "basis boost" to buildings that states determine need the boost to be economically feasible, effective for buildings placed in service after date of enactment. **(Code §42(d)(5)(b)(v))**

MHDC: Standards for awarding a 30 percent basis boost to developments other than those located in QCT and DDA must be established in each state's Qualified Allocation Plan. Staff shall consider potential standards to recommend to the commissioners for consideration with the 2010 QAP. Regardless of an allowable boost, MHDC shall only allocate an amount of credits necessary for the feasibility of a development.

HR 3221: Clarifies 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 the date of enactment. **(Code §42(g)(9))**

MHDC: Accepts the clarification of 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 the Enactment Date.

HR 3221: Repeals 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. **(Code §42(d)(6)(c))**

MHDC: Will not require the ten-year rule for acquisition credits requested for developments substantially assisted, financed, or operated under HUD Section 8, Section 221(d)(3), Section 221(d)(4), or Section 236 programs or the USDA Section 515 program, effective for buildings placed in service after the Enactment Date. Developments that have already received a reservation of credits shall not be automatically awarded additional credits. MHDC staff is awaiting clarification from the IRS concerning what percentage of project-based Section 8

units is considered "substantial" and which state programs might be considered "similar" to the above-stated federal programs.

HR 3221: Modifies 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 ("HUD Hold Harmless" provision). (**Code §42(g)(2) and IRS Notice 88-80**)

MHDC: Accepts the modified HUD 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 ("HUD Hold Harmless" provision).

HR 3221: Adds energy efficiency and historic character to items that must be factored into state QAPs, effective for allocations made after December 31, 2008. (**Code §42(i)(8)**)

MHDC: Energy efficiency and the rehabilitation or conversion of historic buildings are already addressed in MHDC's 2009 QAP.

HR 3221: Modifies 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. (**Code §42(i)(3)(D)(i)(II)**)

MHDC: Accepts 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 (7/30/08). Third party verification evidencing participation in the foster care program must be received.

HR 3221: Defines 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. (**Code §42(i)(8)**)

MHDC: Effective for income determinations made after date of enactment (7/30/08), developments financed with 9% low income housing tax credits (LIHTC) and located in rural areas (as defined in Section 520 of the Housing Act of 1949) are eligible to use the greater of area median gross income or national non-metropolitan median income. To determine which limits apply to a specific property, visit <http://eligibility.sc.egov.usda.gov/eligibility/welcomeAction.do?pageAction=sfp&NavKey=property@12>. Properties located in areas classified as "eligible" for USDA programs at this website are in designated rural areas eligible for this provision. Properties classified as "ineligible" for USDA programs are considered metropolitan and remain restricted to the area median gross income. HOME-assisted units in 9% LIHTC rural properties must follow the HOME program limits.

HR 3221: Increases the minimum rehabilitation threshold for acquisition and rehabilitation Credits 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. Adjusts per unit limit for inflation in future years. **(Code §42(e)(3)(D))**

MHDC: Requires a higher minimum rehabilitation threshold in its 2009 QAP than the one stipulated in the revised statute.

HR 3221: Expands the allowable basis for community service facilities, effective for buildings placed in service after date of enactment. **(Code §42(d)(4)(C)(ii)(I) & (II))**

MHDC: Accepts the expansion of the allowable basis for community service facilities effective for buildings placed in serviced after the Enactment Date. MHDC shall only allocate an amount of credits necessary for the feasibility of the development. Developments that have already received a reservation of 9 percent credits will not automatically receive an increase in credits.

HR 3221: Relaxes the Housing Credit related party rule restricting investment in properties owned by related parties, effective for buildings placed in service after date of enactment. Expands allowable related party interest to 50 percent from 10 percent. **(Removal of Code §42(d)(2)(D)(iii)(I) and part of (II))**

MHDC: Accepts the expansion of the allowable related party interest to 50 percent from 10 percent effective for buildings placed in service after the Enactment Date.

HR 3221: Allows Housing Credits on properties financed with HUD's Section 8 Moderate Rehabilitation program, effective for buildings placed in service after date of enactment. **(Removal of a portion of Code §42(c)(2)(B))**

MHDC: Accepts the allowance to allocate credits on properties financed with HUD's Section 8 Moderate Rehabilitation program effective for buildings placed in service after the Enactment Date.

HR 3221: Extends 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. **(Code §42(h)(1)(e)(ii))**

MHDC: Accepts the extension of the 10 percent carryover allocation test to one year from allocation effective for buildings placed in service after the Enactment Date. The timing of the submission of the test will be noted by staff as an indicator of the progress of the development and the capacity of the developer.

HR 3221: Eliminates the annual income recertification requirement for 100 percent qualified unit developments, applicable for years ending after the date of enactment (7/30/08). **(Code §42(g)(2)(d)(i) and Reg §1.42-5(c)(1)(iii))**

MHDC: PART 1: (*Year 1*) Requires each household to initially income certify according to §42(i)(3)(A)(ii) and §1.42-5(c)(1)(iii) at the time of property ownership transfer and/or resident initial move-in. (*Year 2*) Annual income recertification is required no later than the first anniversary date of move-in or initial certification. (*From Year 3 forward*) For all subsequent years following the annual income recertification, on the anniversary date

following the required certification event, a self-certification (required form Exhibit U) must be submitted annually.

NOTE: HR 3221 addresses "income" recertification but does not address the Code provision requiring verification of student household status and household composition changes. Verification of student household status and household composition changes must continue to meet the requirements as set forth in §42(i)(3)(D)(i)(ii) and Reg §1.42-5(c)(1)(iii)

PART 2:

HR 3221: Mandates the collection and reporting on the following information:

Race; Ethnicity; Family Composition; Age; Income; Use of Section 8 (or other) rental assistance; Disability Status; and Monthly Rental Payment.

MHDC: Requires each household member complete the HUD form 27061-H to collect the Race and Ethnicity data requirement beginning immediately. MHDC requires that Family Composition, Age, Income, Use of Rental Assistance, and Monthly Rental Payment be reported annually (required form Exhibit B updated). Disability Status must be reported annually according to HUD published guidelines although MHDC does not currently offer a required form. All forms may be accessed from the MHDC web site.

HR 3221: Repeals 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. **(Code §42(j)(6)(A) and (B))**

MHDC: Recognizes the repeal of the Housing Credit recapture bond rule as stated.

HR 3221: Excludes military employee's 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 (July 30, 2008) and before January 1, 2012. **(Code §42(g) and HUD Handbook 4350.3 (Ex 5-1))**

MHDC: Accepts the exclusion of military employee's 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 the Date of Enactment and before January 1, 2012.

HR 3221: Modifies the tax-exempt bond next available unit and student rules to make them consistent with the Credit rules, effective for bonds issued after date of enactment. **(Code §42(g)(2)(D) and Code §42(i)(3)(D)(i)(ii))**

MHDC: Accepts modification of the tax-exempt bond next available unit and student rules to make them consistent with the Credit rules, effective for bonds issued after Enactment Date.

HR 3221: Allows project-based voucher rents in Housing Credit developments to reach normally allowed voucher maximum rent, even if greater than Housing Credit rent, effective retroactive to all affected projects. **(Code §42(g)(2)(B))**

MHDC: Allows voucher maximum rent levels to exceed Housing Credit rent prior to Enactment Date.

All information referenced in this notice is for informational purposes only and should not be construed otherwise. For advice and interpretation of the information provided herein please contact your legal counsel and/or tax professional.

RESOURCES:

- Maximum Income / Rent Schedule
- Determine Rural “Eligible” and “Ineligible” areas :
<http://eligibility.sc.egov.usda.gov/eligibility/welcomeAction.do?pageAction=sfp&NavKey=property@12>
- 2008 Housing and Economic Recovery Act (HR 3221)
- Exhibit M: LIHTC Certification of Student Eligibility (Rev. 9/18/08)
- Exhibit U: LIHTC Annual Resident Certification
- Exhibit B: LIHTC Tenant Income Certification
- HUD Form 27061-H, Race and Ethnic Data Reporting Form