Comments Submitted by Mary Levine, April 14, 2009

1. **Should the sub-awards under ARRA be grants or loans to the sub-awardee?**

This was raised at the Listening Session. One audience member also stated that MSHDA should consider the funds to be like synthetic equity.

Staff initially responded that the only adequate way to secure the funds and fulfill its obligation to recapture the funds in the event of non-compliance was to make a loan and secure the loan with a lien.

However, reviewing the MSHDA statute there is authority to secure the recapture obligation using a grant that is also secured by a lien. See MCL 125.1422 (a) and (c) and Rule 125.109 (1).

The authority can require and execute whatever documents are necessary to ensure its compliance with the terms of the federal government's program requiring that the sub-awardee execute a lien to secure the sub-awardee's compliance. This is similar to MSHDA's granting practices when making grants with its own funds.

If upon re-examining the statute and the rule, there is some concern that MSHDA does not have sufficient authority, the best way deal with this is to advocate that the Treasury Secretary adopt a rule consistent with Section 1602(c)(4) of ARRA regarding enforcement of the recapture requirements that allows or requires state HFA's that choose to make grants from the monetized credit payments obtain a lien to secure their ability to comply with the recapture requirements in the statute.

A loan would be less preferable than an outright grant with compliance secured by a lien because of the varied negative tax consequences that could impact the development's owner. Bob Kabbe's email to you accurately described that concern. A review of his email and the comments at the Listening Session support the need to re-evaluate the feasibility of securing compliance by characterizing the awards of exchange credits as loans.

ARRA already supports the idea that grants will be favorably received by Treasury. For example, we know that the grants will not be considered taxable income to the sub-awardees. We also know that owners will receive both eligible and depreciable basis for costs paid with grants. It would follow then that the only legitimate concern is how to secure compliance which MSHDA already has the ability to do without making a loan.

2. TCAP Fund Uses – some commentators have suggested that at least TCAP funds could be used to capitalize reserves. According to commentators, the statute implies that TCAP could fund project related capital expenses including reserves but not operating expenses. It would be useful for MSHDA in conjunction with other state HFA's through the NCSHA to obtain guidance from HUD on that point so there would be more flexibility in administration of TCAP funds.

3. Federal Underwriting Requirements - Where applicants have applied or secured financing under other federal programs that have underwriting requirements that may be different than MSHDA's, MSHDA should defer to those requirements because MSHDA will be achieving compliance with design and construction standards at a level that might not otherwise be used. If the federal agency will be administering DBRA requirements, MSHDA should defer to that agency. This saves time and provides a more efficient way to expedite construction.

4. Statutory and QAP Set-asides – In implementing MSHDA's Plan, statutory and QAP set-aside requirements need to be honored for sponsors who have received a reservation of tax credits who elect to return the reservations. Also, any sponsor that has a federal grant predicated on a reservation should also be protected and those grants given the same status as a firm equity commitment.