

MARYLAND REGISTER

**Proposed Action on Regulations**

<b>Transmittal Sheet</b>  <b>PROPOSED OR REPROPOSED</b>  <b>Actions on Regulations</b>	<b>Date Filed with AELR Committee</b>	<b>TO BE COMPLETED BY DSD</b>
	07/29/2015	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

**1. Desired date of publication in Maryland Register: 9/4/2015**

**2. COMAR Codification**

**Title Subtitle Chapter Regulation**

05 14 02 01-.11

**3. Name of Promulgating Authority**

Department of Housing and Community Development

**4. Name of Regulations Coordinator**

Mark S Petrauskas

**Telephone Number**

301-429-7487

**Mailing Address**

7800 Harkins Road

**City State Zip Code**

Lanham MD 20706

**Email**

mark.petrauskas@maryland.gov

**5. Name of Person to Call About this Document**

Ramona Amin

**Telephone No.**

301-429-7473

**Email Address**

Ramona.Amin@Maryland.gov

**6. Check applicable items:**

New Regulations

Amendments to Existing Regulations

    Date when existing text was downloaded from COMAR online: .

Repeal of Existing Regulations

Recodification

Incorporation by Reference of Documents Requiring DSD Approval

Reproposal of Substantively Different Text:

:                   Md. R  
(vol.) (issue)                   (page nos)                   (date)

Under Maryland Register docket no.: --P.

**7. Is there emergency text which is identical to this proposal:**

Yes  No

**8. Incorporation by Reference**

Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

**9. Public Body - Open Meeting**

OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

**10. Children's Environmental Health and Protection**

Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

**11. Certificate of Authorized Officer**

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Ramona Amin, Assistant Attorney General, (telephone #301-429-7473) on June 5, 2015. A written copy of the approval is on file at this agency.

**Name of Authorized Officer**

Kenneth C. Holt

**Title**

Secretary

**Telephone No.**

301-429-7452

**Date**

June 18, 2015

**Title 05**  
**DEPARTMENT OF HOUSING AND COMMUNITY**  
**DEVELOPMENT**

**Subtitle 14 NEIGHBORHOOD AND COMMUNITY ASSISTANCE PROGRAM**

**05.14.02 Endow Maryland**

Authority: Tax-General Article, Title 10, Subtitle 7, Annotated Code of Maryland

**Notice of Proposed Action**

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The Secretary of Housing and Community Development proposes to adopt new Regulations .01-.11 under COMAR 05.14.02 Endow Maryland.

**Statement of Purpose**

The purpose of this action is to describe policies, procedures and authorizations for allocating taxpayers that donate to qualified permanent endowment funds of eligible community foundations that provide charitable services to priority funding areas.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.**

Endow Maryland, a tax credit program, will provide a 25 percent credit against the State Income Tax for donations to community foundations for the purpose of capitalizing qualified permanent endowment funds. The Endow Maryland program will require one additional staff person at DHCD to administer. Nonprofit organizations, the communities that they serve and local governments may benefit from the investment of qualified permanent endowment funds in local projects and services undertaken by community foundations. Donating businesses and individuals will benefit from tax credits associated with contributions to eligible community foundations.

**II. Types of Economic Impact.**

	Revenue (R+/R-)	
	Expenditure (E+/E-)	Magnitude
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A. On issuing agency:	(E+)	Indeterminable
B. On other State agencies:	NONE	
C. On local governments:	(R+)	Indeterminable

	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	NONE	
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	(+)	Indeterminable

**III. Assumptions.** (Identified by Impact Letter and Number from Section II.)

- A. The program will require new, contractual staff to administer.
- C. County and municipal governments may benefit from investment of qualified permanent endowment funds in local projects, however the magnitude of this benefit cannot be determined.
- F. The public will benefit from projects and services supported by local investment of qualified permanent endowment funds.

**Economic Impact on Small Businesses**

The proposed action has a meaningful economic impact on small business. An analysis of this economic impact follows.

To the extent that community foundations that administer Endow Maryland tax credits are considered small business, small businesses will benefit from the ability to administer proceeds from the allocation of tax credits to taxpayers. Small business that make contributions to qualified permanent endowment funds will benefit directly from the Endow Maryland tax credit by reducing their Maryland tax liability.

**Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

**Opportunity for Public Comment**

Comments may be sent to John Papagni, Director Program Officer, Division of Neighborhood Revitalization, Department of Housing and Community Development, 7800 Harkins Road, Lanham, MD 20706, or call 410-209-5807 , or email to John.Papagni@Maryland.gov, or fax to 410-685-8270. Comments will be accepted through October 5, 2015. A public hearing has not been scheduled.

**Economic Impact Statement Part C**

- A. Fiscal Year in which regulations will become effective: FY 2015
- B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

No

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

General, special

E. If these regulations have no economic impact under Part A, indicate reason briefly:

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

G. Small Business Worksheet:

Attached Document:

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## **Title 05 DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**

### **Subtitle 14 NEIGHBORHOOD AND COMMUNITY ASSISTANCE PROGRAM**

#### **Chapter 02 Endow Maryland**

Authority: Tax-General Article, Title 10, Subtitle 7, Annotated Code of Maryland

##### **.01 General.**

This chapter prescribes the policies, procedures, and authorizations for allocating tax credits to taxpayers that donate to qualified permanent endowment funds of eligible community foundations for the benefit of charitable causes in the state of Maryland.

##### **.02 Definitions.**

###### **A. In General.**

- (1) In this chapter, the following terms have the meanings indicated and as defined in the Act.
- (2) Any terms also appearing in the Internal Revenue Code have the meanings defined there as well.

###### **B. Terms Defined.**

- (1) "Act" means the Tax-General Article, Title 10, Subtitle 7, Annotated Code of Maryland.
- (2) "Department" means the Department of Housing and Community Development, a principal department of the State.
- (3) "Donation" means a donation by a taxpayer of money or publicly traded securities of at least \$500 in value to a qualified permanent endowment fund.
- (4) "Eligible Community Foundation" means an organization that:
  - (a) Is exempt from taxation under §501(c)(3) of the Internal Revenue Code;

(b) Is commonly known as a community trust, fund, endowment, or foundation or by another similar name that conveys the concept of a capital or endowment fund to support charitable activities in the community or area that it serves;

(c) Satisfies the public support test of §170(b)(1)(a)(vi) of the Internal Revenue Code and regulations adopted under that section; and

(d) Is in compliance with national standards for United States community foundations established by the Community Foundations National Standards Board within the Council on Foundations.

(5) "Internal Revenue Code" means the federal Internal Revenue Code of 1986 and the regulations promulgated under it.

(6) "Qualified Permanent Endowment Fund" means a fund that:

(a) Is held in perpetuity by an eligible community foundation;

(b) Is used for the benefit of charitable causes in the State; and

(c) Has an annual spending rate of 5 percent or less calculated using at least a 12-quarter trailing average of the total amount of the fund.

(7) "Redevelopment Assistance" means the expenditure of funds by community foundations for labor and materials used directly in physical improvements.

(8) "Secretary" means the Secretary of Housing and Community Development.

(9) "State fiscal year" means July 1 through June 30.

(10) "Taxpayer" means a business entity or individual that is subject to the State income tax on individuals or corporations.

### **.03 Eligibility Standards for Approved Qualified Permanent Endowment Funds.**

A. Qualified permanent endowment funds shall be submitted for approval by an eligible community foundation.

B. In order to be eligible for approval, a qualified permanent endowment fund shall satisfy the following requirements:

(1) The qualified permanent endowment fund shall be held in perpetuity by an eligible community foundation;

(2) The qualified permanent endowment fund shall be used for the benefit of charitable causes in the State,

including:

(a) Community services, such as child care, recreational services, and economic development services;

(b) Redevelopment assistance;

(c) Job training for individuals of limited income and related job placement services;

(d) Education;

(e) Crime prevention; or

(f) Other services approved by the Act and the Department.

(3) The qualified permanent endowment fund shall have an annual spending rate of 5 percent or less calculated using at least a 12-quarter trailing average of the total amount of the fund.

### **.04 Qualified Permanent Endowment Fund Proposals and Processing.**

A. Number of Proposals. A community foundation may propose more than one qualified permanent endowment fund in any State fiscal year.

B. Forms and Documentation. A proposal shall be made on standard forms provided by the Department and shall include, for each proposed qualified permanent endowment fund:

(1) The name and a description of the qualified permanent endowment fund;

(2) A description of the problem to be addressed by the qualified permanent endowment fund and who will benefit from the qualified permanent endowment fund;

(3) A description of the qualified permanent endowment fund goals and the measurable objectives;

(4) The geographic area benefited by the qualified permanent endowment fund, together with a statement whether the geographic area includes, in whole or in part, a priority funding area or a designated neighborhood conservation area;

(5) A copy of the following organizational documentation for the qualified permanent endowment fund:

(a) The letter from the Internal Revenue Service granting tax-exempt status under §501(c)(3) of the Internal Revenue Code;

(b) Articles of incorporation or Articles of Organization;

(c) Bylaws or Operating Agreement; and

(d) A corporate resolution authorizing submission of the proposal and designating the person or persons authorized to sign documents in connection with the approval of the allocation of tax credits and certification for donations;

(6) As required by the Department, financial statements, annual operating budget, list of major contributors, and current and anticipated funding sources; and

(7) Any other information considered necessary by the Department.

### **.05 Procedures for Claiming and Using Tax Credits.**

A. Requests for Certification of Donation

(1) In order to claim a tax credit for a donation under the Act, the taxpayer shall submit a request for certification through the community foundation on forms provided by the Department, together with any documentation of the donation as required by the Department.

(2) Each request for certification of a donation shall contain:

- (a) The name of the taxpayer;
- (b) The community foundation to which the donation will be made;
- (c) The community foundation identification number;
- (d) The qualified permanent endowment fund to which the donation will be made; and
- (e) The amount of the donation.

**B. Approval of Certification of Donation**

(1) The Department shall:

(a) Approve all applications that qualify for a tax credit certificate under this section on a first-come, first-served basis and in a timely manner; and

(b) Reserve for each taxable year at least 10 percent of the available credits for donations of \$30,000 or less.

(2) Within 30 days of the approval of a proposed donation:

(a) The taxpayer shall submit to the Department a receipt from the community foundation for the donation;

and

(b) In the case of:

(i) A cash donation, proof of the amount of the donation; or

(ii) Publicly marketed securities, a certification by an independent and unrelated third party as to the value of the donation consistent with Internal Revenue Service Publication 561;

(c) Any other information considered necessary by the Department.

(3) Notice of certification may be made by the Assistant Secretary for Neighborhood Revitalization.

**C. Timing.**

(1) A request for certification may not be accepted for donations received before January 1, 2015.

(2) An initial claim for a tax credit shall be made for the taxable year in which the donation is made.

(3) The donation shall be received by the community foundation within the deadline set by the Department.

(4) A request for certification shall be submitted by the community foundation and received by the Department by the later of:

(a) The end of the taxable year; or

(b) One month after the donation is made.

**D. Refusal to Certify Donation.** The Department may refuse a request for certification of a donation if it determines that:

(1) The maximum amount of donations eligible for tax credits for a qualified permanent endowment fund would be exceeded by the sum of:

(a) The amount of the proposed donation; and

(b) The total amount of donations previously certified as eligible for tax credits for the State's fiscal year;

(2) The taxpayer has overstated the value of any publicly traded securities included; or

(3) The request for certification is not made in a timely manner.

(4) The request for certification does not comply with the Act or the Department's policies and procedures regarding the tax credits, as determined by the Department in its reasonable discretion.

**E. Calculating the Tax Credit.**

(1) The tax credit allowed to a taxpayer shall be equal to 25 percent of the amount of the donation that:

(a) Was made in the taxable year of the taxpayer; and

(b) Has been certified by the Department.

(2) For any taxable year, the sum of all tax credits for any taxpayer, including any carryover credits, may not exceed the lesser of:

(a) \$50,000; or

(b) The total amount of tax otherwise payable by the taxpayer for the taxable year.

(3) Any excess credit that would have been allowed but for the limitations of §D(2) of this regulation may be carried over and applied as a credit for succeeding taxable years until the earlier of:

(a) The full amount of the excess tax credit is used; or

(b) The expiration of the fifth taxable year after the taxable year in which the donation was made.

**F.** The same tax credit may not be applied more than once against different taxes by the same taxpayer.

**G.** The sum of donations eligible for tax credits for all qualified permanent endowment funds approved for each State fiscal year may not exceed \$250,000.

**.06 Taxes Against Which Tax Credits May Be Applied.**

**A. General Description.** The tax credits described in the Act are credits against State income taxes under Tax-General Article, §10-704.4, Annotated Code of Maryland for business entities; and under Tax-General Article, §10-704.6, Annotated Code of Maryland for individuals.

B. Disclaimer of Liability. The Department makes no representation, and accepts no responsibility, as to any tax or other consequences to a taxpayer or any other party, arising out of the approval of a qualified permanent endowment fund, the allocation of credits, or the certification of a donation.

**.07 Administration.**

A. Handbooks and Manuals. The Department may adopt a handbook containing internal guidelines related to the administration of the Act or establishing other requirements relating to the Act.

B. The Department shall ensure that the application forms are publically available on its website and at its offices.

C. Delegation of Authority. An action or decision required to be taken or permitted to be made by the Department under the Act, or by the Secretary or the Department under these regulations, may be delegated by the Secretary.

D. The Department shall designate members of the Department and other State agencies to evaluate proposals.

E. The members of the Department shall evaluate the proposals based on the guidelines described above.

F. The Secretary shall make all final decisions on approval of the proposals.

G. A decision concerning the eligibility of a community foundation or a qualified permanent endowment fund is not a contested case within the meaning of the Administrative Procedure Act or COMAR 05.01.01.02.

**.08 Record Keeping and Record Retention; Quarterly Reports.**

A. Record Keeping. Community foundations receiving an allocation of tax credits for an approved qualified permanent endowment fund shall keep the following records:

- (1) Financial records in connection with the approved qualified permanent endowment fund;
- (2) Records in connection with donations from taxpayers that claim or expect to claim tax credits; and
- (3) Quarterly reports described in §C of this regulation.

B. Record Retention. The records described in §A of this regulation shall be kept for at least seven years from the allocation of the tax credits.

C. Quarterly Reports.

(1) Community foundations receiving an allocation of tax credits for donations to an approved qualified permanent endowment fund shall provide the Department with reports on the qualified permanent endowment fund on a quarterly basis.

(2) Each quarterly report shall contain the information and be in the form required by the Department.

(3) The Department may elect to change the frequency of reporting from time to time, in its discretion.

**.09 Nondiscrimination; Drug and Alcohol Free Workplace.**

In order to participate in the allocation of tax credits, the community foundation shall comply with the following requirements:

A. A community foundation may not discriminate on the basis of race, color, religion, national origin, sex, marital status, physical or mental disability, sexual orientation, or age in any aspect of the allocation of the tax credits, except with regard to age as permitted under the federal Housing for Older Persons Act, as amended from time to time, or other similar federal laws, or in any aspect of employment by any community foundation in connection with any qualified permanent endowment fund financed or assisted under the Act;

B. A community foundation shall comply with all applicable federal, State, and local laws, and Department policies regarding discrimination and equal opportunity in employment, housing, credit practices, and drug and alcohol free workplaces, including:

- (1) Titles VI and VII of the Civil Rights Act of 1964, as amended;
- (2) Title VIII of the Civil Rights Act of 1968, as amended;
- (3) State Government Article, Title 20, Annotated Code of Maryland, as amended;
- (4) The Department's Minority Business Enterprise Program, as amended;
- (5) Executive Order 01.01.1989.18 Drug and Alcohol Free Workplace, and any Department or State regulations adopted or to be adopted to carry out the requirements of that Order;
- (6) The Fair Housing Amendments Act of 1988, as amended; and
- (7) The Americans with Disabilities Act of 1990, as amended.

C. Covenants implementing these requirements, including affirmative action measures, shall be included in appropriate agreements with the Department and other parties.

**.10 Waiver.**

The Secretary may waive or vary provisions of this chapter to the extent that the waiver or variance is consistent with the Act and if, in the written determination of the Secretary, the application of a regulation in a specific case or in an emergency situation would be inequitable or contrary to the purposes of the Act.

**.11 False Statements.**

A. A person may not knowingly make or cause to be made a false statement or report in any document required to be furnished to the Department or in any agreement relating to the tax credits.

B. A community foundation, taxpayer or any other party that knowingly makes or causes to be made a false statement or report is subject to cancellation and withdrawal of an allocation of credits, or cancellation and withdrawal of a certification of a donation, in addition to any other penalties authorized by law.



