MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	04/04/2017	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 5/12/2017

2. COMAR Codification

Title	Subtitle	Chapter	Regulation
05	03	08	01-.14

3. Name of Promulgating Authority

Department of Housing and Community Development

4. Name of Regulations Coordinator — **Telephone Number**
Mark S Petrauskas — 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 — **Telephone No.**
Mark Petrauskas — 301-429-7487

Email Address
mark.petrauskas@maryland.gov

6. Check applicable items:

X- 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 **X-** 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 General Provisions Article, §3-302(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 Mark Petrauskas, Assistant Attorney General, (telephone #301-429-7487) on March 29, 2017. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Kenneth C. Holt

Title	**Telephone No.**
Secretary	301-429-7452

Date

April 3, 2017

Title 05
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
Subtitle 03 HOMEOWNERSHIP PROGRAMS
05.03.08 Energy–Efficient Homes Construction Loan Program

Authority: Housing and Community Development Article, §4-2003(a)(5), Annotated Code of Maryland

Notice of Proposed Action

[]

The Secretary of Housing and Community Development proposes to adopt new Regulations .01-.14 under COMAR 05.03.08 Energy–Efficient Homes Construction Loan Program.

Statement of Purpose

The purpose of this action is to describe the policies, procedures and eligibility requirements for loans under the Energy–Efficient Homes Construction Loan Program.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact.

The Energy–Efficient Homes Construction Loan Program will provide loans for the construction of energy efficient homes. The Department will have costs associated with administering the program and will also generate revenue from repayments of principal and interest. Local governments, homeowners and businesses may benefit from the investment of funds in energy-efficient homes, resulting in increased local economic activity, energy savings and revenue.

II. Types of Economic Impact.	Revenue (R+/R-) Expenditure (E+/E-)	Magnitude
A. On issuing agency:	(R+)	$3,000
(2)	(E+)	$36,393
B. On other State agencies:	NONE	
C. On local governments:	(R+)	Indeterminable

	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	(+)	Indeterminable
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(1). The Department expects to make loans in the total amount of $300,000 in fiscal year 2017 and will realize a return of approximately 1% per year for an annual amount of approximately $3,000. As more loans are made by the Department in subsequent years, the Department expects the annual return will increase each year.

A(2). The Department will expend approximately $36,393 on administering the program in fiscal year 2017, which includes cost for salary and fringe benefits, contractual services and other operating expenses.

C. Local governments will benefit by having new homes constructed in their jurisdiction which should increase the property tax base. Local governments may also benefit from the expansion of the low energy homes market in their jurisdictions which could incentivize energy-conscious homebuyers to buy in their jurisdiction. The exact amount of benefit to a local jurisdiction is indeterminable although the impact is expected to be minimal.

D. Regulated industries and trade groups associated with home building will benefit by having the access to capital to construct energy efficient homes as a borrower or a subcontractor on a funded project. The exact amount of benefit is indeterminable.

F. Members of the public that purchase an energy-efficient home may receive a direct impact since the financing of the construction was made available under the program. The direct benefit may be an affordable purchase price and a reduction in the energy bills by at least 50 percent which equate to an annual saving of approximately $1,800. The exact benefit of purchase price and energy saving is indeterminable. The general public will receive direct and indirect benefit from improved physical and social conditions caused by the projects funded under the program. This amount is indeterminable.

Economic Impact on Small Businesses

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

Small businesses engaged in home construction are an eligible borrow and may receive a loan under the program. In addition, small business may benefit by being a subcontractor on a project funded under the program. However, the magnitude of that impact cannot be determined.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Joe Seehusen, Director of Housing and Building Energy Programs, Department of Housing and Community Development, 7800 Harkins Road, Lanham, Maryland 20706, or call 301-429-7731, or email to joe.seehusen@maryland.gov, or fax to . Comments will be accepted through June 12, 2017. A public hearing has not been scheduled.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 2017
B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?
Yes
C. If 'yes', state whether general, special (exact name), or federal funds will be used:
Special- DHCD Energy Efficient Construction Fund
D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

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:

Title 05 DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Subtitle 03 Homeownership Programs

Chapter 08 Energy–Efficient Homes Construction Loan Program

Authority: Housing and Community Development Article, §4-2003(a)(5), Annotated Code of Maryland

.01 General.

These regulations prescribe the policies, procedures, and authorizations for making construction loans and providing credit enhancement for the construction of net-zero homes and low-energy homes.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.
B. Terms Defined.
(1) “Act” means Housing and Community Development Article, Title 4, Subtitle 20, Annotated Code of Maryland.
(2) “Administration” means the Community Development Administration, an agency in the Division of Development Finance of the Department of Housing and Community Development.
(3) “Closing costs” means:
(a) The cost of a credit report fee, survey fee, title examination, loan origination fee, title insurance fee, and application fee;
(b) Title fees, attorney's fee, documentation and preparation fee, recording fee, State and local transfer tax, and documentary stamps; and
(c) Taxes, ground rent, hazard insurance, and any mortgage insurance premiums to be paid at closing.
(4) “Credit enhancement” means any form of insurance, guarantee or agreement that increases the credit strength of a loan and reduces the risk of lending to a borrower.
(5) “Department” means the Department of Housing and Community Development, a principal department of the State of Maryland.
(6) (a) “Development costs” means the costs incurred in carrying out all works and undertakings which the Department deems reasonable and necessary for the acquisition and construction of a project;
(b) “Development costs” includes the costs for:
(i) Acquisition of land and any buildings on it;
(ii) Closing costs;
(iii) Necessary studies, surveys, plans, and specifications;
(iv) Architectural, engineering, or special services;
(v) Site preparation and development;
(vi) Labor and materials for construction;
(vii) Fees incurred in connection with financing the project;
(viii) Construction period interest on the loan;
(ix) Indemnity and surety bonds;
(x) Premiums on insurance; and
(xi) Other costs the Department deems reasonable and necessary.
(7) “Director” means the Director of the Administration.
(8) “Home” means a single family residence or a multifamily building used by the occupants as their residence.
(9) “Low–energy home” means a home that achieves a Home Energy Rating System (HERS) Index rating of 50 or lower.
(10) “Net–zero home” means a home that is designed to produce an amount of energy in 1 year that is equal to the amount of energy that the home uses in 1 year.
(11) “Program” means the Energy–Efficient Homes Construction Loan Program.
(12) “Program Manager” means the Manager of the Program as assigned by the Department.
(13) “Project” means any undertaking or project, or portion thereof, including land, buildings, and improvements, and which otherwise constitutes a low-energy home or net-zero home upon completion.
(14) “Secretary” means the Secretary of Housing and Community Development.

.03 Eligible Borrowers.
To qualify as an eligible borrower under the program, an applicant shall:
A. If a nonprofit organization, corporation, or partnership, be in good standing and qualified to do business in Maryland;
B. Have the legal capacity and all necessary authorization to incur the obligations of the loan;
C. Own the project or have a valid sales contract to purchase the project;
D. Demonstrate credit worthiness and repayment ability acceptable to the Department; and
E. Demonstrate the ability to complete the project.

.04 Eligible Projects.
Eligible Projects shall be:
A. A low-energy or net-zero home upon completion;
B. Properly zoned for residential use;
C. Rehabilitated or constructed in accordance with the applicable federal, State, and local building, zoning, environmental, health, and housing codes and standards, which includes the latest version of the building codes adopted by the Department; and
D. Sold or rented to an individual that will use the property as their residence.

.05 Loan Terms and Requirements.
A. Proceeds of the loan may be used for the:
(1) Acquisition of a project;

(2) Construction and development costs of a project;
(3) Closing costs associated with the financing and acquisition of the project; and
(4) Other costs the Department deems reasonable and necessary.

B. The Department shall establish interest rates for each loan based on the underwriting of each project.

C. The maximum interest rate on a loan shall be a rate which does not impair the financial viability of the project or the capability of the borrower to construct a low-energy home or net-zero home.

D. The Department may establish lower interest rates for projects that achieve greater energy savings.

E. The maximum loan, when added to any superior debts, may not exceed the greater of the:
(1) Amount of permanent financing approved for the project; or
(2) 100 percent of the market value of the eligible building and property after construction as determined by the Department.

F. Repayment. Terms for repayment of principal and interest shall be established based on the underwriting for each project and in a manner which does not impair the financial viability of the project or the capability of the borrower to construct a project.

G. A program loan shall be evidenced by a promissory note and secured by a mortgage or deed of trust to be recorded in the land records of the county in which the project is located.

H. Loan funds shall be disbursed in accordance with a draw schedule approved by the Department, which may include releasing funds upon successful inspections.

I. The borrower shall agree not to sell, cease to own, assign, transfer, or dispose of all or any part of the project or the borrower's interest in it, during the loan term, without the prior written consent of the Department.

J. Insurance.
(1) The borrower shall maintain property, fire and extended coverage insurance on the buildings comprising a project both during and after construction, which shall name the Department as a loss payee, additional insured and mortgagee as applicable.
(2) If the project is located on real property which is in the 100-year flood plain, as designated by the United States Department of Housing and Urban Development, the project shall be covered by a flood plain insurance policy.
(3) For all secured loans the borrower shall provide a standard American Land Title Association (ALTA) Loan policy or other form of title policy approved by the Department.

K. Taxes and assessments against the property which are due and payable shall be paid at or before closing.

.06 Liability and Other Insurance.

A. The Department may require the borrower to obtain any of the following types of insurance, issued by a company that is approved by the State Insurance Commissioner, depending on the size of the project and risks to the Department:
(1) Owner's liability;
(2) Owner's property or hazard or contractor's builder's risk;
(3) Contractor's liability;
(4) Architect's errors and omissions; and
(5) Engineer's errors and omissions.

B. In addition to the requirements of §A of this regulation, owner's liability insurance shall:
(1) Name the Department as an additional insured; and
(2) Remain in force for the duration of the loan.

.07 Additional Requirements.

A. In addition to a promissory note and deed of trust, the Department may require the borrower to execute or provide any of the following documents:
(1) A loan agreement;
(2) An agreement and declaration of covenants and restrictions;
(3) A disbursement agreement;
(4) A guaranty of completion or loan payments;
(5) A completion assurance agreement;
(6) An assignment of the construction contract;
(7) An opinion of borrower's counsel;
(8) An opinion of contractor's counsel;
(9) A contractor's letter and certification;
(10) An assurance of compliance with civil rights requirements;
(11) A fair practices certification; and
(12) Such other documents as the Department may find it desirable or necessary to require.

B. The Department, at its sole discretion, may require additional security or collateral from the borrower to assure completion of the construction of the project or repayment of the loan.

C. The collateral may be in the form of one or more of the following:
(1) A cash escrow;
(2) A letter of credit in an amount, form, and from a financial institution acceptable to the Department;
(3) Depository accounts pledged to the Department;

(4) Performance and payment bonds from a surety acceptable to the Department;

(5) A completion assurance agreement executed by the borrower and backed by some form of monetary collateral;

(6) A guaranty of completion or loan payments, or both, executed by a third party who is financially able and willing to back the guarantee by some collateral acceptable to the Department;

(7) A pledge of the developer's fee; or

(8) Other collateral acceptable to the Department.

.08 Loan Application and Processing Procedures.

A. The Department may accept applications on a first-come first-serve basis or through competitive rounds to be announced by the program periodically.

B. A loan application shall be made upon standard forms prescribed by the Department.

C. Each application shall be fully completed and properly executed and be accompanied by the following items:

(1) A copy of the articles of incorporation, bylaws, and most recent financial statements of an applicant for a nonprofit organization, corporation, or partnership;

(2) A copy of:

(a) The deed to the property;

(b) A contract or option agreement to purchase the property; or

(c) An agreement of understanding or letter of intent to purchase the property;

(3) A preliminary description, plans, and specifications of the low-energy or net-zero home to be constructed;

(4) A description of the applicants experience and current activity which demonstrates the applicant’s capacity to construct a project; and

(5) Identification of how the land is presently zoned.

D. Feasibility Notification. Upon receipt of all documentation necessary to determine the feasibility of a project and the primary loan structure and terms, the Department shall issue a written notification letter to the applicant.

E. The feasibility notification letter shall outline anticipated loan terms and shall specify any additional documentation which shall be provided or other conditions which shall be met in order for the Department to recommend a loan for commitment, including:

(1) Plans and specifications or a detailed scope of work for the construction of the project and proposed energy usage by the home;

(2) A copy of the contract for the work;

(3) Evidence of zoning compliance;

(4) A copy of a commitment or letter of intent to provide permanent financing which, at a minimum, shall state the amount, rate, and terms of the permanent financing; and

(5) A schedule of the proposed sales price or rent of the home.

F. Approval.

(1) Upon satisfaction of all the requirements and conditions of the feasibility notification letter, the Department shall undertake an analysis of each application as to the final recommended loan amount, structure, and terms.

(2) Loans shall be submitted to the Housing Finance Review Committee in accordance with COMAR 05.01.07, as applicable, and to the Secretary for approval.

G. Commitment Letter. Upon the approval a loan, the Director or Program Manager is authorized to issue a commitment letter setting forth the amount of the loan, the interest rate on the loan, and the other terms and conditions under which it will be made.

H. Rejection of Applications. The Department shall issue a written notice of the determination of ineligibility if it determines that a project or applicant is not eligible for a loan.

I. Reconsideration. Applicants may request reconsideration of a rejection in accordance with the procedures contained in the program guidelines.

.09 Credit Enhancement.

A. The Department may provide credit enhancement on a loan made by a lender for a project that meets the requirements of regulation .04 of this chapter.

B. A project financed by a loan that is credit enhanced by the Department shall:

(1) Be a net-zero home or a low-energy home upon completion;

(2) Have clear and merchantable title acceptable to the Department;

(3) Conform to all applicable federal, State, and local building, zoning, environmental, health, and housing codes;

(4) Be insured with hazard insurance issued by a company that is approved by the State Insurance Commissioner and, when applicable, flood insurance;

(5) Have an appraised value that is satisfactory to the Department;

(6) Be secured by a lien against the mortgaged property; and

(7) Meet any other standards of the Department.

C. A borrower shall establish to the satisfaction of the Department the capacity to meet the financial obligations of the loan and complete the project.

D. Application.

(1) A lender shall submit an application, in the form prescribed by the Department, which shall contain a complete credit package and any other documentation required by the Department.

(2) Applications will be reviewed on a loan by loan basis by the Department.

(3) The Department will consider the following factors when deciding whether it will approve an application for credit enhancement:

(a) Amount of loss coverage being requested;

(b) The terms of the loan;

(4) Financial capability and credit rating of the borrower;

(5) Condition and value of property securing loan;

(6) Capability of borrower to successfully construct and sell a project; and

(7) Any other factors related to the Department's risk in providing credit enhancement.

E. Scope of Credit Enhancement.

(1) The Department may offer the following types of credit enhancement:

(a) Mortgage insurance;

(b) Guarantee;

(c) Risk sharing agreement; or

(d) Any other form of credit enhancement.

(2) Credit enhancement is limited to economic loss due to a monetary default and does not include loss due to casualty or title risk.

(3) Expenses incurred for property repair resulting from casualty loss, including losses due to negligence, flood, fire, termites, vandalism, and defective construction, are not eligible for credit enhancement coverage.

(4) Expenses incurred by the lender in the preservation and normal maintenance of a defaulted project may be covered in accordance with the terms and conditions of the credit enhancement agreement with the Department.

F. Premiums for credit enhancement shall be determined by the Department from time to time for various programs and types of coverage.

G. Premiums may be set at different levels for different categories of loans and loan programs depending on the risk factors, which may include the:

(1) Amount of loss coverage being requested;

(2) Terms of the loan;

(3) Financial capability and credit rating of the borrower;

(4) Condition and value of property securing the loan;

(5) Capability of borrower to successfully construct and sell a project; and

(6) Any other factors related to the Department's risk in providing credit enhancement.

H. The lender shall follow the procedures contained in the credit enhancement agreement with the Department upon default of a loan.

I. The right of the Department to pursue a borrower for deficiency or loss exists in every case to the extent allowed by law and may be enforced at the discretion of the Department.

J. The Department may refuse payment of a claim on the basis of fraud, misrepresentation, or material error or omission with respect to any claim.

.10 Participation with Private Lenders.

A. The Department may participate with a lender to collectively lend money for the construction of net–zero and low–energy homes by:

(1) Making loans on a project including subordinate loans;

(2) Pooling loan funds;

(3) Entering into loan participation agreements; and

(4) Purchasing a loan or an interest in a loan.

B. A lender shall submit an application, in the form prescribed by the Department, which shall contain a complete project description, credit package, and any other documentation required by the Department.

C. The Department's review and approval of an application shall follow the procedures in regulation .08 of this chapter.

D. The Department shall enter into an agreement with a lender it has agreed to collectively lend money to a borrower on a project.

E. Each agreement to collectively lend on a project shall specify:

(1) Timing of loan repayments;

(2) Rate of return for the lender and the Department;

(3) Risk of loss attributed to the lender and Department in the event of default; and

(4) Any other terms the lender and Department require.

.11 Post Construction Verification.

A. Each project shall pass an inspection and verification test that the home was constructed to the standards to achieve the level of energy usage approved by the Department.

B. The Department may require a third party to inspect and verify that the home was constructed to achieve the required energy rating.

.12 Minority Business Enterprises.

A. It is the goal of the Department to increase program participation by minority business enterprises certified under Title 14, Subtitle 3 of the State Finance and Procurement Article, Annotated Code of Maryland.

B. To increase participation by minority business enterprises, the Department will:

(1) Directly market the program to minority business enterprises; and

(2) Require an applicant to submit a minority business plan.

.13 Nondiscrimination; Drug and Alcohol Free Workplace.

A. An applicant, borrower, contractor may not discriminate on the basis of race, color, religion, national origin, sex, marital status, physical or mental disability, sexual orientation, or age, 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, in leasing or otherwise providing dwelling accommodations or in any other aspect of the development, administration, or operation of any project or undertaking financed or assisted under the program, or in any aspect of employment by any sponsor, developer, or contractor in the construction, repair, or maintenance of any property financed or assisted under the program.

B. An applicant, borrower or contractor shall comply with all applicable federal, State, and local laws and Departmental policies and programs regarding discrimination, equal opportunity in employment, housing, and credit practices, and drug and alcohol free workplaces, including:

(1) Title 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) The Fair Housing Amendments Act of 1988, 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) State Government Article, Title 20, Annotated Code of Maryland, 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 between the Department and other parties.

.14 Program Administration.

A. Program Handbook. The Department may establish from time to time program guidelines or manuals containing internal underwriting standards and loan processing requirements.

B. Fees. The Department may charge an applicant, borrower, or lender customary loan application and loan fees.

C. The Department shall ensure that program guidelines, fee information, and application forms are publically available on its website and at its offices.

D. Delegation. The Secretary may delegate to the Director of the Administration or to any other official or employee of the Department or Administration the authority to execute or approve any program loans, documents, or contract documents.

E. Waiver. The Secretary may waive or vary particular provisions of these regulations in writing to the extent that the waiver is not inconsistent with the Act if:

(1) Conformance to the requirements of any federal, State, or local programs in connection with providing financing to the project necessitates waiver or variance of a regulation; or

(2) In the determination of the Secretary, the application of a regulation in a specific case or in any emergency situation would be inequitable or contrary to the purposes of the Act.