MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
Low Income Housing Tax Credit Program

POLICY STATEMENT

DEEPER TARGETING AND MULTIPLE AMGI LEVELS

A project must achieve a minimum threshold of low income occupancy to qualify for any Low Income Housing Tax Credit (LIHTC). At a minimum, either 20% of the units must be occupied by residents whose annual incomes do not exceed 50% of area median gross income (AMGI) or 40% of the units must be occupied by residents whose annual incomes do not exceed 60% of AMGI (as determined and adjusted annually by HUD). The income level of the set-aside (either 50% or 60%) is termed the Minimum Set-Aside AMGI. The percentage of total residential units in the project that are reserved as LIHTC units is known as the applicable fraction.

Many project owners elect to target a higher percentage of units to low income persons and/or to target a percentage of the units to persons at lower income levels than the minimum set-aside. Often, projects have multiple AMGI targeting levels. For example, a project may reserve all of its units for low income persons (a 100% applicable fraction) meeting one AMGI level or it may have 100% of units targeted for low income persons, but at several different AMGI levels. Other projects may be mixed income projects in which a portion of the units are reserved for low income persons and the remainder of the units are unrestricted. The mixture of AMGI levels that a project is targeting is termed the project mix.

An owner/manager of an LIHTC project must be aware of all tiers in the project's income limits. He or she must know what percentage of the residential units are LIHTC units and at which AMGI these units must be targeted. The owner of a project is responsible for determining which AMGI a tenant meets. To meet the 60% AMGI, a household must have an annual income that is at or below the 60% AMGI **at time of move-in** and be rent-restricted at the 60% AMGI. A household which meets the 60% criteria is deemed a "60*% household*". A household which meets the 50% AMGI, is deemed a "50*% household*", etc.

Income changes are important. In addition to certifying a household's eligibility at move-in, family income must be re-examined (recertified) at least annually. If the income of the occupants of a qualifying unit increases to more than 140% of the Minimum Set-Aside AMGI, the unit may continue to be counted as a low income unit as long as the unit continues to be rent-restricted and the next unit of comparable or smaller size in the building is occupied by a qualified low income tenant (this is known as the Next Available Unit Rule or the 140% Rule). **The Next Available Unit Rule applies separately to each building in the project.** In 100% LIHTC projects, because the next available unit is always leased to an income-eligible household, the need to replace a household only occurs when the household vacates the unit.

This policy is to clarify MSHDA's position regarding the treatment of household income increases for projects that have multiple income levels.

SECTION 1: 100% LIHTC Projects (with one AMGI Level)

As stated previously, a project must meet one of the two minimum set asides. In the simplest structured project, a project has a 100% applicable fraction, targeted to persons at the Minimum Set-Aside AMGI (i.e. 100% of the units at 60% AMGI or 100% @ 50% AMGI). A household's eligibility is determined at the time of its move-in to the LIHTC unit. A household which, for example, meets the 60% AMGI is deemed a "60*% household*". The household continues to be eligible after its income increases to more than 140% of the applicable income limit because the next available unit is always leased to a household meeting the qualifying AMGI.

Some projects with 100% applicable fractions may have elected to target the units to persons with lower income levels (i.e. 100% @ 40% AMGI or 100% @ 30% AMGI). In these projects, a unit continues to qualify as an LIHTC unit even if the household's income rises above the applicable AMGI level (so long as its rent remains restricted) and even after it rises to more than 140% of the applicable AMGI level and the Minimum Set-Aside AMGI because the next available unit is always leased to an eligible household. The need to replace a household only occurs when the household vacates the unit. When the household vacates the unit, another household meeting the applicable AMGI level must replace it.

In summary, once a household is deemed as a *"60% household"*, it is always eligible as a *"60% household"*. A *"60% household"* must be replaced by a *"60% household"*. The same is true for any other AMGI level that a project might be targeting.

SECTION 2: 100% LIHTC Projects (with multiple AMGI Levels)

In a second type of LIHTC project, all units are LIHTC units, but the project has multiple income levels at which its units are targeted. For example, a 100% LIHTC project may target a portion of its units to households at the 60% AMGI level, a portion at 50% AMGI level, and a portion at 30% AMGI level.

As in all 100% LIHTC projects, because the next available unit is always leased to an eligible household, the need to replace a household only occurs when the household vacates the unit. Thus, for example, if a *"30% household's*" income increases to above 140% of the Minimum Set-Aside AMGI, nothing must be done. This unit can continue to be counted as a "30*% household"* as long as the gross rent remains restricted at the 30% AMGI. When this or any other "30*% household"* vacates a unit, it must be replaced by a "30*% household"* (though not necessarily in physically the same unit and not necessarily in the next available unit). The project owner, however, must pay close attention to the AMGI levels of its tenants to ensure that enough units are occupied by/reserved for the appropriate income levels to meet the required percentage of units that must be targeted at each AMGI level. In other words, if 50% of the units must be targeted to persons at or below 40% AMGI and 50% at 60% AMGI, the project cannot have 51% of the units at 60% AMGI.

In summary, once a household is deemed as a *"30% household"*, it is always eligible as a *"30% household"*. A *"30% household"* must be replaced by a *"30% household"*. The same is true for any other AMGI level that a project might be targeting.

<u>SECTION 3: Mixed Income Projects (with one AMGI level for the low income units)</u>

In mixed income projects, a portion of the residential units are LIHTC units and a portion of the units are market rate (unrestricted income levels and rent amounts). Owners of mixed income projects must pay close attention to the Next Available Unit Rule.

As in 100% LIHTC projects, when a "40*% household"* simply <u>vacates</u> a unit (the household's income did not increase to more than 140% of the Minimum Set-Aside AMGI), it must be replaced by a "40*% household"* (though not necessarily in physically the same unit) in order for the project mix and applicable fraction to be maintained. The Next Available Unit Rule does not apply to move-outs. Unlike 100% LIHTC projects, however, in mixed income projects, if a "40*% household's*" income <u>increases</u> to above 140% of the Minimum Set-Aside AMGI (and the household remains in the building), the <u>next available unit</u> in the building must be occupied by a low income household.

In summary, in mixed income projects, once a household is deemed a *"40% household"*, it is eligible as a *"40% household"* until its income increases to above 140% of the Minimum Set-Aside AMGI, at which time the next available unit rule is triggered.

<u>SECTION 4: Mixed Income Projects (with multiple AMGI levels for the low income units)</u>

In mixed income projects, a portion of the residential units are LIHTC units and some are market rate (unrestricted) units. Often, mixed income projects contain multiple AMGI for the LIHTC units. For example, 50% of the residential units are LIHTC, 50% are unrestricted. Of the 50% LIHTC units, 50% (25% of total project) are at 60% AMGI and 50% are at 40% AMGI. The owner of the project must pay close attention to ensure that the project mix is maintained.

When a "40*% household"* simply <u>vacates</u> a unit (the household's income did not increase to more than 140% of the Minimum Set-Aside AMGI), it must be replaced by a "40*% household"* (though not necessarily in physically the same unit and not necessarily in the <u>next</u> available unit). When a "40*% household's@* income <u>increases</u> to above 140% of the Minimum Set-Aside AMGI, the <u>next available unit</u> in the building must be rented to a low income household.

In summary, in mixed income projects, once a household is deemed as a *"40% household"*, it is eligible as a *"40% household"* until its income increases to above 140% of the Minimum Set-Aside AMGI, at which time the next available unit rule is triggered. The "40*% household"* must be replaced by a low income household. The same is true for all other AMGI levels a project is targeting.

<u>NOTES:</u>

(1) **<u>MSHDA's position regarding the point at which the Next Available Unit Rule is triggered</u>**. IRS regulations indicate that the Next Available Unit Rule is triggered when a household's income increases to more than 140% of the qualifying income level. Since "Deeper Targeting" options are State policies, not Federal policies and since a household can qualify (in general, based on IRS policy) for an LIHTC unit if its income is less than the project's Minimum Set-Aside AMGI, MSHDA has deemed this as the point at which the next available unit rule is triggered. The next available unit rule is not triggered until "40% *household's*" income, for example, increases to more than 140% of the 60% MINIMUM - SET-ASIDE AMGI, not when it increases to more than 140% of the 40% AMGI. The Minimum Set-Aside AMGI is used as the triggering point for the next available unit rule so that the project mix can be maintained and so that a project will not have to make more than the required number of units a particular AMGI level (see Scenario D on page 4 of this policy statement for an example).

(2) **140% Rule takes Precedence**: If a household vacates a unit, but there is another household whose income has increased to more than 140% of an AMGI level, the next available unit is triggered at that time. For example, if a "60*% household*" vacates a unit, but there is a "30*% household*" that is above 140% of the Minimum Set-Aside AMGI, the 140% rule takes precedence. The next available unit must be rented to a low income person. This new tenant must be LIHTC-eligible and ideally be a 30% household, however, it can be any AMGI level (except market rate). The over-income household can continue to be counted as a 30% household (as long as every next available unit in the future continues to be rented to a low income household) or it can be made a market rate unit or other AMGI level for which it qualified for at recertification. The owner should pay close attention to ensure that the project mix is being maintained.

(3) **The AMGI level of a household is made at the time of certification. Once designated, the AMGI cannot be changed unless the household is recertified.** A "50*% household*", for example, cannot be designated as a "40*% household*" unless it was recertified as meeting the 40% income restriction, and deemed as such at that time, since the proposed new AMGI level is lower than the AMGI level the household qualified for at move-in. A household can be redesignated to a higher AMGI level at move-in, regardless of new income amount. In the case of the "50*% household*", it could be changed to a 60%. Recertification includes completion of a Tenant Income Certification, obtaining third party verifications, calculation of new income amount, etc. and could be either an interim or an annual recertification.

The only exception is when implementing the next available unit rule. While waiting for another unit to become available, the household whose income has increased can temporarily be counted as meeting the old AMGI. After another unit is available, the previous household's AMGI level can be changed at that time.

(4) **One AMGI level only**. To meet a particular AMGI, a household must have a certified annual income that is less than or equal to that amount. Therefore, a household at 30% AMGI could also meet the 40% AMGI, 50% AMGI, and 60% AMGI, but not vice versa. A household, however, can be deemed as one AMGI only. A household cannot, for example, be simultaneously deemed or treated as a "30*% household*" and a "40*% household*".

(5) **AMGI changes are optional**. Changing a household's AMGI level is optional and is not mandated by MSHDA. The 140% income limit is not used in determining whether or not the household can be converted to a different AMGI limit.

(6) A household can be made a market rate unit at recertification (provided the project is a mixed income project with unrestricted units), regardless of its income amount and regardless of whether or not it would qualify at an AMGI the project is targeting. MSHDA has no requirement that a specific household be made or retained as an LIHTC household. If a household is changed to a market rate tenant, it may have to be replaced by a household meeting the old AMGI level in order to maintain the project mix and/or applicable fraction.

(7) This policy statement is intended to be used for LIHTC purposes only. Project owners should check with its financing sources to determine if it has additional constraints.

(8) The following are scenarios:

Minimum Set-Aside = 40% @ 60%, Applicable Fraction = 50%. Next Available Unit Rule is triggered at $25,200.		
% of Total Units	**Area Median Gross Income**	**Current Max. Allowable Income for One Person**
50% of units	Market Rate	N/A
20% of units	60% AMGI	$18,000
10% of units	50% AMGI	$15,000
10% of units	40% AMGI	$12,000
10% of units	30% AMGI	$9,000

Scenario A: Tenant A moved in to Unit #25 as a "30*% household*". One year later at recertification, its income has increased to $13,500 (the next available unit rule is not triggered until $25,200). At the time of completion of the recertification, the tenant in Unit #25 can continue be counted as "30*% household"* as long as its rent is restricted at 30% AMGI ($225 maximum). As an alternative, Tenant A can be designated as either a *"40% household," a "50% household"* or a "60*% household"* or it can be made a market rate unit. If the AMGI level of Tenant A is changed, it must be replaced by another *"30% household"* in order to maintain the project mix.

Scenario B: Tenant B moved into Unit #38 one year ago as a "40*% household"*. Upon annual recertification, it is determined that Tenant B's income has now increased to $26,000 (more than 140% of the Minimum Set-Aside AMGI). Tenant B can continue to be counted as a "40*% household"* as long as its rent is restricted to the 40% AMGI, however, the next available unit must be rented to a "40*% household"*. After the next available unit is rented to a "40% *household*", Tenant B can be converted to a market rate unit.

Scenario C: Tenant C moved into a LIHTC unit with an annual income of $5,675 and was designated as a *"30% household".* At recertification, the household's income increased to $20,000. Since $20,000 is less than $25,200 (140% of the Minimum Set-Aside AMGI), the next available unit rule is not triggered. The household can continue to be counted as a *"30% household"* as long as its rent is restricted at that level or it can be made a *"40%, 50%, or 60% household"* or it can be made a market rate unit.