LIHTC Compliance Policy # 7
June 2008

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
Low Income Housing Tax Credit Program

POLICY STATEMENT

COMMON AREA UNITS

IRS Revenue Ruling 92-61, which has an effective date of September 9, 1992, discusses the provision for including employee-occupied units within Housing Tax Credit (HTC) projects. To summarize the ruling, it may be permissible for a manager, assistant manager, or other employee of the owner to reside in a unit within a project. An employee can reside in a unit that is designated as common area or in a rental unit. A **"common area unit"** is a unit used for residential purposes, and does not include any units or space used as an office, storage, model apartment or for any other non-residential purpose. It supports and/or is reserved for the benefit of all the rental units. Under this interpretation, the unit is excluded from the low income occupancy calculation and the unit can be used by the manager without concern as to the effective rent being charged to or the income level of the manager. If this option is elected, the unit occupied by the resident manager is included in the building's eligible basis, but excluded from the applicable fraction for the purposes of determining the building's qualified basis. In order for a household to be eligible to reside in a unit that is designated as a common area unit, the head of household (or co-head) must be a full-time employee at the particular development. Persons who are employed less than full-time and persons who are employed at multiple projects (such as regional managers) at the development are not eligible to reside in a common area unit.

An employee could also reside in a unit that is designated as an **HTC residential unit.** All tenants, including employees of the development, occupying HTC rental units that are not "common area" must be certified as income-eligible, rent-restricted, and under a lease with an initial term of at least six months. As will be discussed later in this policy statement, the full amount of any rent concessions given the employee must be included as income for HTC purposes.

DESIGNATING A UNIT AS COMMON AREA

When completing the final allocation (Placed in Service) application, the owner must indicate whether or not the project will contain a common area unit(s). MSHDA reviews the unit configuration and determines whether or not to approve the common area unit. The Regulatory Agreement/Restrictive Covenant is then prepared and recorded indicating the unit configuration. The owner must designate a specific unit(s) as common area. The designation is made by completing a Common Area Unit Designation Statement (LIHTC Form #047). This form is completed and submitted with the first annual certifications prepared for the project. The owner must identify the unit number (along with the square footage and number of bedrooms) and the address of the building in which the common area will be. If the option to designate the employee unit as a low income rental unit is selected, the appropriate monitoring fee must be paid for this unit(s).

Once designated, the project's configuration cannot be changed without prior written approval from the HTC Section of MSHDA.

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ONE CHANGE PER SIX (6) MONTH PERIOD

Requests to change the number of or location of the common area unit(s) in the project must be submitted to the HTC Section of MSHDA in writing by the owner or with the owner's acknowledgement (not the management agent) of the project. The request must indicate what type of change is being requested and to which unit(s). Along with the request, a revised Common Area Unit Designation Statement must be submitted. Requests to change the designation may be made at any time during the year (not solely as part of the annual compliance certification submission process), however, only one change in the common unit(s) designation will be considered by MSHDA during any six(6) month period for any one project. For example:

> *Michigan Villas is an HTC project that contains three buildings and two common area units. The owner of the project requests that the location of one of the common area units be changed to a different building. MSHDA reviews the request and approves it in writing to the owner in a letter dated June 21, 1998. The project will not be eligible to make any other designation changes (of any type) to any units in the project until January 21, 1999 or after.*

RENT CONCESSIONS MUST BE COUNTED AS INCOME:

If the HUD Handbook does not specifically exclude a particular source of monies as income, it must be included, even if this may conflict with income tax laws {*HUD Handbook Section 2, Subsection 3-9(a) and 26 CFR 1.42-5 (b)(vii) - Tax Credit Compliance Monitoring Regulations*}. Thus, if the manager or employee receives free rent or a rent discount, the full imputed value of the rent or discount must be counted as income. This applies whether or not living on-site is optional or mandatory for the employee. For additional information regarding certifying incomes of tenants, see the Michigan HTC Compliance Manual.

In valuing the rent concession and determining how much should be included as income for employees living in HTC (non-common area) units, the amount should be the amount of rent that an HTC household living in the unit would pay rent plus the applicable utility allowance. For example:

> *Brenda recently accepted a position with Michigan Villas as a resident manager. Her compensation is $15,000 annual, plus she will receive a free residential unit at the development, which contains 100 units and has an applicable fraction of 100%, which does not include any common area units. The usual rent for her apartment is $400 per month*. *Her total compensation for LIHTC purposes will be $19,800 ($15,000 salary plus $4,800 in rent concessions). In order for Brenda to be eligible to reside in an HTC unit (non-common area), the maximum allowable income must $19,800 or higher.*

For employees residing in common area units, the value of the rent concession does not have to be counted as income (since the employee can reside in the common area unit without regard to the income of the household).

In projects with multiple Area Median Income targeting levels for its HTC units (i.e deeper targeting), the lower level(s) of income requirements must be satisfied with non-common area tenants. For example:

> *Michigan Villas has a total of 100 residential units. Of those 100 total, 70 must be occupied at 60% AMI and 30 units at 20% AMGI. If the project includes a common area unit, it must be one of the 60% AMGI units. Thirty units must always be maintained at the 20% AMGI level.*

Any changes without prior written approval from the HTC Section will be deemed as potential noncompliance and reported to the IRS. All requests for changes must be submitted to MSHDA in writing by the owner or with the owner's acknowledgement**, not the management agent.**