TAB W

LIHTC Policy Bulletins

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY

Low Income Housing Tax Credit Program

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MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
Low Income Housing Tax Credit Program

POLICY STATEMENT

4%/9% MIXED TRANSACTION GUIDANCE

Please note that the purpose of this memorandum is not to impose requirements or guidelines, but to simply communicate information that MSHDA staff would anticipate may be helpful to applicants as they contemplate the 4%/9% Mixed Transaction structure. Applicants who have alternative concepts that are not covered as part of this memorandum are highly encouraged to contact Chad Benson at (517) 582-2302 or bensonc@michigan.gov.

As part of the 2021 Qualified Allocation Plan (QAP) Scoring Criteria, points have been incorporated for the purpose of incentivizing development plans which create efficiencies by developing a portion of the plan through a 4% LIHTC financing structure. Applicants that are interested in this structure are highly encouraged to contact MSHDA staff to talk through the development structure. The purpose of this memorandum is to help communicate some preliminary information on potential structures and is not intended to in any way impose requirements or guidelines or to bind MSHDA or commit MSHDA to a certain structure. Since there is a considerable amount of variability between project types, MSHDA intends to work with applicants applying with 4%/9% Mixed Transactions to determine whether an appropriate and acceptable financing structure can be derived. In all cases, MSHDA staff will have the sole discretion to determine whether a development receives points under the QAP for 4%/9% Mixed Transaction Developments.

- Developments that are proposing a 4% LIHTC component and a 9% LIHTC component should be structured as two separate transactions with two separate and distinct ownership entities or two separate and distinct condominiums. The intent of this is to ensure that the 9% LIHTC component is separate from and not somehow tainted by the 4% LIHTC component.
- It is anticipated that developments may be structured where the 9% LIHTC component and the 4% LIHTC component are in separate buildings or where the 9% LIHTC component and the 4% LIHTC component are in the same building but are owned by separate entities under a condominium structure. In the latter case, Applicants will likely want to be cautious to make sure that the transaction is structured so that the 4% LIHTC component is separate from the 9% LIHTC component to avoid the 9% LIHTC component being tainted. It is anticipated that this will likely involve a proportional allocation of costs between the 4% LIHTC component and the 9% LIHTC component. Additionally, applicants will likely want to anticipate and consider any challenges or timing/structuring issues that may be associated with potentially having multiple lenders and/or equity providers in the same building. Depending on the specifics of the project, applicants seeking MSHDA direct lending on the 4% LIHTC portion of the transaction

may be required to pursue MSHDA financing on the 9% LIHTC portion in order to avoid multiple lenders financing the same building.

- Applicants will not be prohibited from applying for soft gap financing from MSHDA in conjunction with a MSHDA direct loan to assist with the funding for the 4% LIHTC component. Applicants that are requesting MSHDA gap financing will need to apply through the MSHDA Gap Financing NOFA and should be cognizant of the competitive nature of the MSHDA Gap Financing NOFA, the MSHDA Gap Financing NOFA deadlines, and the LIHTC Funding Round deadlines, which may impact the ability to receive the 4%/9% Mixed Transaction points. Applicants are encouraged to contact MSHDA staff to discuss this, if necessary.
- Applicants seeking 10 points under Section D.1. of the QAP Scoring Criteria will be required to demonstrate that at least 50% of the total development is financed by 4% LIHTC and Tax-Exempt Bonds. Applicants that cannot demonstrate this will not receive points under this section of the Scoring Criteria.
- Applicants submitting a 4%/9% development will be required to submit the following items to MSHDA by the 4%/9% Mixed Transaction Level 1 Review Due Date outlined in the 2021 QAP.
  - Narrative outlining the overall project development plan, location, number of units, targeted tenant populations, and any unique structuring or financing considerations of the 4% component and the 9% component.
  - Preliminary 4% LIHTC Direct Lending pro-forma
  - Preliminary 9% LIHTC Program Application
  - Preliminary LIHTC Self-Score
  - Development ownership chart showing the ownership structure of both the 4% LIHTC component and the 9% LIHTC component
  - Preliminary timeline of 4% LIHTC component and the 9% LIHTC component from initial application to project completion

LIHTC Allocation Policy #2

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
Low Income Housing Tax Credit Program

POLICY STATEMENT

ISSUANCE OF RETURNED OR RECAPTURED CREDIT

This policy bulletin outlines MSHDA's guidelines for use of returned or recaptured tax credit which was allocated in a previous year.

A tax credit recipient may be unable to fulfill the requirements set forth in the Qualified Allocation Plan. Consequently, the recipient may return the credit or MSHDA may be required to recapture the credit. At the sole discretion of the Authority, returned or recaptured tax credit may be reissued employing the following criteria:

1. Returned or recaptured credit may be made available in the upcoming funding round; or

2. Returned or recaptured credit may be awarded to a project(s) that have been determined in a previous funding round to be eligible for credit, but for which no credit was available.

Developers will not be penalized for voluntarily returning credits. MSHDA encourages developers to make a realistic assessment of their ability to use allocations and return credits rather than delaying the use of a scarce federal resource.

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
Low Income Housing Tax Credit Program

POLICY STATEMENT

TENANT OWNERSHIP PLAN

One point is awarded under Michigan's Qualified Allocation Plan for projects where the owner agrees to offer for sale 100 percent of the housing tax credit units at the end of the initial 15-year compliance period to tenants of such units. To qualify for the point, the owner must provide a detailed tenant ownership plan that complies with the requirements of the Internal Revenue Code, is acceptable to the Authority and includes the sales price for each unit, which sales price must exceed the unit's proportional share of the price that would be determined with respect to the building pursuant to Internal Revenue Code Section 42(i)(7), but cannot exceed the greater of: (A) the total of (i) the unit's proportional share of the outstanding principal mortgage balance, plus (ii) all federal, state and local taxes attributable to the sale, plus (iii) the seller's actual costs of sale such as title insurance premiums, legal fees, closing fees, tax proration adjustments, home warranty costs and owner-paid repairs, and (iv) other reasonable costs of sale approved by the Authority; or (B)the full mortgage amount that would be available to a qualified low-income household at 60% AMI using a housing expense ratio of 30%.

The tenant ownership plan must acknowledge that each individual unit will maintain the affordability and compliance requirements contained in the Tax Credit Regulatory Agreement until the later of (i) the expiration of the initial 15-year compliance period or (ii) until the unit is sold to an income-qualified household. For purposes of this LIHTC Allocation Policy #5, the term income-qualified household refers to, with respect to each unit, the tenant occupying the unit and non-tenant purchasers that would qualify to lease the unit in question under the terms of the Tax Credit Regulatory Agreement. The plan must also assure that all unsold units that are occupied as of the expiration of the initial 15-year compliance period will remain rental units until such time as the tenant occupying the unit either later purchases the unit or moves out. Upon move out by any such tenant, the unit may be offered for sale or lease to income-qualified households, whether or not prior tenants of the project. Tenants not exercising their right of first refusal to purchase their unit may not be required to move out as a result of their non-exercise. Written purchase agreements must be used with all sales.

Following a sale of a unit to an income-qualified household after the expiration of the initial 15-year compliance period, the Authority will provide a partial release of the Tax Credit Regulatory Agreement discharging the restrictions as to the unit that was conveyed. Once a unit is released from the Tax Credit Regulatory Agreement as provided in the preceding sentence, the restrictions of the Tax Credit Regulatory Agreement will no longer apply to the released unit and the Authority's oversight and compliance monitoring will cease with respect to the released unit. Any resale, price or other restrictions applicable to a unit that the owner includes in the tenant ownership plan relating to the period following the initial sale of a unit and release of the Tax Credit Regulatory Agreement will not be monitored or enforced by the Authority. The Authority will not release the Tax Credit Regulatory Agreement upon the conveyance of the project or units in the project to parties or entities, including entities eligible to receive a right of first refusal pursuant to 42(i)(7), other than income-qualified households. All unsold units in the project will remain subject to the restrictions set forth in the Tax Credit Regulatory Agreement until the end of the extended use period as defined therein.

Additionally, to qualify for the point, the questions listed below must be answered and included with the LIHTC application package in the Tenant Ownership Exhibit.

1. How and when will the tenant be informed of their option to purchase their unit?

2. How and when will the tenant exercise the right of first refusal? Will the right of first refusal be a continuing right of first refusal exercisable by the tenant so long as the tenant remains in the unit?

3. Following move out by a tenant that did not exercise its right of first refusal, will the unit be offered to income-qualified households for sale, for lease or both? If leased, will future tenants of the unit have a right of first refusal to purchase the unit?

4. How will the unit be converted from rental to home ownership (including whether and how a condominium regime may be established in order to permit this)?

5. What is the exit strategy for the owner?

6. How will the purchase price be determined?

7. Will the owner provide title insurance?

8. Will the buyer be given a warranty deed?

9. Who will instruct the buyer to file for Michigan’s Homestead Exemption?

10. Will there be down-payment assistance? If yes, what agencies will be used and how will the buyer be made aware of the agencies?

11. Will a licensed housing inspector inspect the unit before it is sold? If there are required repairs, who will pay for them? If the owner is paying for repairs, will there be an escrow agreement if applicable?

12. What will happen if the buyer later decides to sell the property? Will there be any resale or sale price restrictions? If so, what form will the restrictions take and how will they be monitored and enforced?

LIHTC Allocation Policy #6

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
Low Income Housing Tax Credit Program

POLICY STATEMENT

TAX-EXEMPT BOND FINANCED LOW INCOME HOUSING TAX CREDIT PROJECTS

According to Section II of the 2021 Qualified Allocation Plan (QAP):

> In accordance with Section 42 of the Internal Revenue Code, tax-exempt bond financed projects are required to satisfy certain basic requirements for allocation of LIHTC and are subject to the QAP. These projects are not, however, subject to the LIHTC allocation limits, other QAP requirements from which they are expressly excepted, or as determined by the Michigan State Housing Development Authority (MSHDA).

The following policies apply to projects financed with Tax-Exempt Bonds and Low-Income Housing Tax Credits (LIHTC):

- **Allocated on a Rolling Basis**
    - Tax-Exempt Bond LIHTC projects are allocated LIHTC on a rolling basis and are not subject to the scheduled funding round(s) as stated in the 2021 QAP.
- **30-Point Minimum Threshold Score**
    - Tax-Exempt Bond LIHTC projects are required to meet a minimum threshold score of 30 points from the Scoring Summary accompanying the 2021 QAP to be eligible for a Reservation of LIHTC.
- **<u>Not</u> Subject to Allocation Limits**
    - Tax-Exempt Bond LIHTC projects are <u>not</u> subject to the $1,500,000 maximum award per project limit as stated in Section V.D.1. of the 2021 QAP.
- **Do <u>Not</u> Count Towards Maximum Award to any one Principal**
    - Award(s) of LIHTC to project(s) financed with volume cap Tax-Exempt Bonds do <u>not</u> count towards the $3,000,000 maximum award from the annual tax credit ceiling to any one Principal as stated in Section V.D.2 of the 2021 QAP.
- **Tax-Exempt Bond/4% LIHTC projects are required to submit the following for LIHTC staff review and approval prior to issuance of a Reservation:**
    - Primary Application
    - Addendum I (as needed to verify the project meets the QAP thresholds and achieves the minimum threshold score)
    - Scoring Summary
    - Authority Approved Staff Report
    - Subsidy Layering Review (SLR) Application and HUD-2880 (if an SLR is necessary)
- **Allocation and Compliance Fees**
    - Tax-Exempt Bond/4% LIHTC projects are subject to the allocation and compliance fees enumerated in Section XVI of the 2021 QAP (See LIHTC Compliance Policy Bulletin #8 for further guidance on Compliance Fees for Tax Exempt projects).

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
Low Income Housing Tax Credit Program

POLICY STATEMENT

FINANCIAL CAPACITY AND CREDITWORTHINESS

The applicant, general contractor, and non-profit (if applicable) will be evaluated and approved for financial capacity and creditworthiness based on the following.

1. **Review of Financial Capacity**:

Required Documentation: *(applies to individual or corporate sponsors)*

Option 1: Audited or Reviewed Financial Statements dated within six months of the application due date.

Plus

If Reviewed Statements: A statement from the chief executive or operating officer and the chief financial officer of the applicant or corporation stating the reviewed financial statements presents fairly the financial position of the corporation to the best of each person's knowledge and belief

Option 2: Audited or Reviewed Financial Statements dated within fifteen months of the application due date.

Plus

An Interim Balance Sheet dated within six months of the application due date. The balance sheet can be prepared by an independent CPA or by a CPA who is an employee of the proposed applicant. However, the balance sheet must be in a form substantially the same as the audited balance sheet dated within fifteen months of the application due date.

Plus

A statement from the chief executive or operating officer and the chief financial officer of the applicant or corporation stating the balance sheet presents fairly the financial position of the corporation to the best of each person's knowledge and belief.

Plus

(i) A statement from independent CPA (if applicable) stating the CPA has reviewed and prepared the balance sheet from the books and records of the applicant or corporation ***or*** (ii) a statement from the CPA who is an employee of the proposed applicant (if applicable) stating although the CPA has not performed an audit of the balance sheet and furthermore is employed by the applicant or corporation and thus is no independent, to the best of the CPA's knowledge and belief the balance sheet accurately reflects the financial position of the applicant or corporation.

Financial Thresholds:

Applicants (sponsor): Required to have net liquid assets at least equal to 3% of the permanent mortgage loan(s) of the proposed project, plus permanent mortgage loan(s) for project(s) that have been approved previously and have not placed in service (i.e. projects currently in the development process). If an applicant is unable to satisfy this financial requirement, a letter from the LIHTC equity provider confirming its acceptance of the applicant's financial capacity may be submitted along with the submission the above-required financial statements.

General Contractor: Required to have net liquid assets at least equal to 3% of the construction contract of the proposed project, plus the construction contract for project(s) that have been approved previously and have not submitted contractor cost certifications to MSHDA (i.e. projects currently in the development process).

2. **Review of Creditworthiness**:

Tax Liens and Credit History:

The Authority will not approve the allocation of tax credits if the applicant, general contractor, or the non-profit (if applicable) has outstanding tax liens, or does not have a reasonable credit payment history. To expedite the credit review of corporate applicants, general contractors, and non-profits (if applicable), it is required that current financial information be on file with Dun & Bradstreet.

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
Low Income Housing Tax Credit Program

POLICY STATEMENT

REAL ESTATE APPRAISAL REQUIREMENTS

MSHDA uses real estate appraisals for a variety of LIHTC allocation purposes:
1. To estimate the value of a proposed project;
2. To compare the price to be paid for the project to its appraised value to assure that the purchase price is reasonable;
3. To estimate both the value of the land and its improvements and to determine if the applicant made a similar cost segregation in its application;
4. To help determine the economic feasibility of a project by comparing the income and expense estimates in the appraisal to the cash flow estimates of the applicant to assure that the cash flow estimates are reasonable.

Real estate appraisals shall be performed by independent fee appraisers licensed in Michigan as Certified General Appraisers. The appraisal report shall conform to applicable Michigan statutory and regulatory requirements and the requirements of the Uniform Standards of Professional Appraisal Practice.

Appraisals shall be dated no later than 6 months from the submission date of the 10% Test/Carryover application.

For acquisition/rehabilitation projects, MSHDA limits the acquisition price that is includable in both the project costs and eligible basis to the lesser of the actual purchase price or the “as is” appraised value of the property prior to rehabilitation.

For all other projects, the value of the land included in project cost shall not exceed the lesser of its appraised value or the purchase price.

For in-kind contributions of land, evidence of the value of the contribution must be supported by an appraisal.

For further information concerning Appraisal Guidelines, please see Tab QQ.

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
Low Income Housing Tax Credit Program

POLICY STATEMENT

LIHTC SECURITY POLICY

Purpose: To protect the personal information and identity of applicants.

Procedure: Approved Low-Income Housing Tax Credit (LIHTC) Allocation staff will run Credit and Criminal Background checks on applicants applying for LIHTC. Applying applicants will submit their Name, Date of Birth, Social Security Number, and Address to LIHTC Allocation staff, who will use the following to conduct their research and clearance activities: Credit Reporting websites such as Dun & Bradstreet along with Criminal Background checks websites such as CLEAR by ChoicePoint and ICHAT. A separate form designed by Approved LIHTC Allocation staff shall be completed detailing the findings of the report and will be stored in each file. These forms **shall not contain** the Date of Birth or Social Security Number of the applicants.

Protection:

Building: MSHDA is located in a limited access building with each employee carrying an access card for entry and the building is locked during non-working hours. In addition, the building is monitored by a security guard and anyone visiting must be checked in by the receptionist and wear a visible “Visitor” badge to show that he or she is a visitor.

Access Log: Approved LIHTC Allocation staff who will have access to applicant’s personal information shall be identified on an Access Log, which will be maintained in hard and electronic format. The Access Log will identify the date each staff member was granted access and when that access was revoked. The Access Log will be reviewed on a quarterly basis and reauthorized by the Allocations Manager.

Processing: Submitted personal information shall be kept in a “Confidential” file until processing is complete. Only approved staff shall have access to the Processing file. The Processing file shall be stored in a locked file cabinet located in an approved LIHTC Allocation staff location.

Destruction of Applicants Personal Information:
Once the reports and forms are completed, the submitted personal information of the applicants shall be destroyed by means of: Shredding, Burning, or Pulverizing. No alternative methods are acceptable.

Storing of Information:

In the event an applicant's personal information reports activities that will require additional review, the reports will need to be kept on file and secured in a file marked "Confidential". The file will be placed in a locked cabinet located in the approved LIHTC Allocation staff location. Only staff approved in the Access Log would have access to such documents.

Computer Security:

Reports of applicants Credit or Criminal Background checks shall not be saved or stored on any computer. Staff with access to websites or personal information on their computer screen must minimize screen visibility if an unauthorized person enters the workspace. If documents are printed, they must be picked up immediately by authorized personnel. Approved staff must lock their keyboard or setup a screensaver with a password when away from their computers.

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
Low Income Housing Tax Credit Program

POLICY STATEMENT

UTILITY ALLOWANCE UNDERWRITING PROCEDURES

In response and relating to MSHDA's published Utility Allowance Policy, which was spurred by Treasury Regulations relating to Utility Allowances, the following are underwriting procedures that applicants should adopt when preparing and submitting an application for consideration under the Low Income Housing Tax Credit program. Since accurate calculation of utility allowances is a key factor in determining the financial viability of a proposal, applicants are strongly encouraged to review MSHDA's Utility Allowance Policy to accurately determine which Utility Allowance method directly applies to their specific project. Once the method is identified, applicants must follow the steps below to ensure that the complete and accurate information is submitted with the application in order to allow MSHDA to appropriately underwrite the project over the 15-year compliance period.

1. Applicants must definitively state the method that is being used for calculating the Utility Allowances based on the specific type of development that is being proposed.
    a. NOTE: Since there is not a practical or definitive method for knowing what the actual utility consumption of a newly constructed project will be, all new construction developments are prohibited from using Method #5 "Agency Estimates" for project underwriting purposes. After the first year of the credit period, if the development is up and running and can produce sufficient data to use Method #5 on an ongoing basis, the owner may request MSHDA approval to use Method #5 going forward if that is an allowable method.
2. Applicants must provide sufficient documentation (RHS/HUD Utility Chart, PHA Rate Sheet, Utility Company Estimate, HUD Utility Model Calculation, or the agency approved Utility Allowances through the Actual Consumption Method for existing LIHTC properties already using this method) with the application to show how the specific utility allowances for the units are being calculated. All rate sheets, charts, or models should be accompanied by an explanation and/or a separate calculation so that the LIHTC underwriter can easily and accurately verify how the utility allowances in the application were derived based on the documentation that is submitted.

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
Low Income Housing Tax Credit Program

POLICY STATEMENT

GROSS RENT FLOOR ELECTION

The maximum (gross) rent which a project owner can charge for a LIHTC eligible low income unit is based on the Multifamily Tax Subsidy Program (MTSP) area median gross income (AMGI). Under Section 42 of the Internal Revenue Code, the gross rent for a unit cannot exceed 30 percent of the imputed income limit for a qualified low income household (50 percent or 60 percent of AMGI).

The MTSP AMGI figures are published by the Department of Housing and Urban Development and are revised on an annual basis. As the MTSP AMGI of an area changes, the rent limitation for a particular unit will change; however the Housing and Economic Recovery Act of 2008 indicates that a qualified project's income and rent limits never have to decrease from a prior years applicable limits.

If the AMGI decreases, a reduction in the gross rent may be required. However, the gross rent limitation does not ever need to go below the limitation applicable for the earliest period the building (that contains the unit) was included in the determination of whether the project is a qualified low-income housing project (gross rent floor).

IRS Revenue Procedure 94-57 provides clarification on determining the effective date of the gross rent floor. It states the general rule that the gross rent floor takes effect on the date the credit agency initially allocates tax credit to a building (or date of reservation for Tax-Exempt buildings); however, an owner may elect to have the gross rent floor take effect on a building's placed in service date.

To establish the gross rent floor effective date from this time forward, a project owner will be required to file an election statement with the Michigan State Housing Development Authority (MSHDA Form # LIHTC 023). The project owner may opt to establish the gross rent floor at either the date of allocation (or date of reservation for Tax-Exempt buildings)or at the placed in service date. This election statement must be executed at the time of the issuance of the Reservation and/or Carryover of Low Income Housing Tax Credit. In any event, any election must be made prior to the placed in service date. Once this election is made, it is irreversible. Owners are not required to file any documentation with the IRS to make the election.

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
735 East Michigan Avenue – P.O. Box 30044
Lansing, Michigan 48909

GROSS RENT FLOOR ELECTION STATEMENT
LOW INCOME HOUSING TAX CREDIT

As owner of ________________________________ located in __________________________,
(Name of Project) (City or Township)

__________________ County, Michigan, I hereby elect the effective date of the gross rent floor
(County)

for this project to be:

☐ date of allocation (or date of reservation for Tax-Exempt)

☐ placed in service date

____ ________________________
(Name of Ownership Entity) (Federal Taxpayer ID #)

____ ________________________
(Signature of Authorized Official) (Title)

____
(Typed Name of Authorized Official)

____
(Date)

____
(LIHTC Project #)

____
(MSHDA Project #)

FOR MSHDA/LIHTC USE ONLY:

Date of Allocation: ____________
(or date of reservation for Tax-Exempt buildings)

Placed in Service Date: ____________

LIHTC 023
Gross Rent Floor Election

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
Compliance Monitoring Section

POLICY STATEMENT

MARRIED INDIVIDUALS LIVING APART

This policy statement is to clarify the treatment of prospective tenants of Low Income Housing Tax Credit (LIHTC) projects who are married persons but who do not plan to reside with a spouse. In some situations, the income of the prospective resident alone may be within LIHTC guidelines, but with the inclusion of the absent spouse's earnings, the household would be ineligible to reside in a restricted unit. The determination of annual income must be made in a manner consistent with the Department of Housing and Urban Development (HUD) Section 8 guidelines in HUD Handbook 4350.3. The HUD Handbook does not specifically address marital separations, however, it does state the following:

1. Spouses are counted as family members [Figure 3-6, Page 3-56]; and
2. The head, spouse, and co-head must always be listed on the 59 Data Requirements, even if they are temporarily absent [Part 3-10a(3), Page 3-15].
3. All amounts, monetary or not, that go to or are received on behalf of the family head, spouse or co-head (even if the family member is temporarily absent), or any other family member;

The HUD 4350.3 discusses the following situations, which are somewhat analogous and which involve a marital separation:

- A military spouse is counted as a household member even though absent spouse is not physically residing in the unit. It further states :if the spouse or a dependent of the person on active military duty resides in the unit, that person's income must be counted in full, even if the military member is not the head, or
- The income of a household member who is confined to a nursing home can be excluded only if that person is permanently absent.

In the absence of documentation that a spouse is permanently absent, the absent spouse should be considered a "Temporarily Absent Family Member" and that spouse's income and assets must be included as part of household income. The income of permanently absent household members would not have to be included as part of household income.

Following is a non-exhaustive list of items that can be used to document that a separation is permanent:

- Divorce filing or legal separation documents
- Documentation from an attorney or legal aid office indicating that the prospective resident/tenant has filed, is pursuing or has inquired about a divorce or legal separation.
- Copy of legal restraining order or documentation that the prospective resident/tenant has experienced domestic violence
- A statement from a person who provided counseling to the tenant in an official capacity as part of his or her occupation (i.e., attorney, therapist, marriage

counselor, clergy) indicating that the separation is permanent. The statement must be sworn or prepared on the counselor's business letterhead.

- A sworn statement from the tenant indicating the following:
  - (a) The spouses operate as separate households and the absent spouse will not reside in the unit; and
  - (b) The separation is permanent.
- Legal or official documents, such as income tax forms indicating two separate residences for the spouses.

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 <u>vacates</u> 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.

<u>SECTION 2: 100% LIHTC Projects (with multiple AMGI Levels)</u>

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 <u>vacates</u> 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"* <u>vacates</u> a unit, it must be replaced by a "30*% household"* (though not necessarily in physically the same unit and not necessarily in the <u>next</u> 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) **<u>140% Rule takes Precedence</u>**: 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) **<u>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.</u>** 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) **<u>One AMGI level only</u>**. To meet a particular AMGI, a household must have a certified annual income that is <u>less than</u> 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 <u>one AMGI only</u>. A household cannot, for example, be simultaneously deemed or treated as a "30*% household*" and a "40*% household*".

(5) **<u>AMGI changes are optional</u>**. 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.

LIHTC Compliance Policy #4
October 1998

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
Compliance Monitoring Section

POLICY STATEMENT

PROHIBITION AGAINST APPLYING MINIMUM INCOME REQUIREMENTS FOR PROSPECTIVE SECTION 8 RECIPIENTS

IRC Section 42(h)(6)(B)(iv) prohibits refusing to lease to a Section 8 voucher or certificate holder simply because that person is such a holder. Leasing policies that discriminate or have the effect of excluding a large portion of Section 8 tenants are prohibited.

The Section 8 Existing certification and voucher programs provide for the monthly payment of a portion or all of the rent for its recipient. The risk of economic loss for owners/managers as a result of non-payment of rent is substantially reduced. The incomes of voucher and certificate holders must meet the HUD Section 8 guidelines in order to be eligible to participate in that program. Owners/managers may not establish minimum incomes for Section 8 applicants as a requirement for occupancy in an LIHTC development.

MSHDA’s policy against imposing minimum income requirements applies only to Section 8 recipients and does not prohibit such restrictions for non-Section 8 tenants. A Section 8 household cannot be denied residency simply for its status as such or for failure to meet a development’s minimum income requirement; however, a household can be denied residency if it fails to meet any other consistently applied screening criteria (e.g. criminal background, eviction history, credit rating).

This policy applies to all LIHTC projects and is effective immediately.

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
Low Income Housing Tax Credit Program

POLICY STATEMENT

NON-CUSTODIAL CHILDREN AS HOUSEHOLD MEMBERS

In some situations, a child may be cared for by a person who does not have legal custody or guardianship of him or her and spend a substantial amount of time with that caretaker. These care arrangements can be temporary, of unknown duration, sporadic (the child lives there only sometimes) and/or "at-will" (the guardian can remove the child from the household or the caretaker can end the arrangement at any time). A "non-custodial" child is an individual under the age of 18 who is not emancipated, not residing in a unit with his or her parent or legal guardian, and not in the process of being adopted or for whom legal custody or guardianship is not in the process of being obtained. There are two issues related to non-custodial children:

(1) income-eligibility of the household, and
(2) occupancy in a restricted unit.

"Non-custodial children" is a topic that is not specifically or adequately addressed in the HUD 4350.3. Until specific guidance is provided by HUD or the IRS, non-custodial children should be treated according to the rules provided for foster children, which are the most analogous situation discussed in the HUD 4350.3. Similar to foster children, they cannot be included for purposes of determining the income-eligibility of the household. However, in accordance with the Fair Housing Act (discussed below), non-custodial children are permitted to reside in the restricted unit.

(1) Income Eligibility

A determination must be made as to whether or not to count the child as a household member for income-eligibility purposes. In some instances, a tenant (or owner/management agent of an LIHTC project) will attempt to count the child as a household member simply to use a higher income limit based on the larger family size or in order to meet a full-time student prohibition exception. In some cases, the household would not be eligible to reside in an LIHTC unit without the inclusion of the child. To promote consistency in determining who to count as a household member and who cannot be included, a child who does not reside with his or her legal custodian and whose legal permanent residence is someplace other than the LIHTC unit, should **not** be counted as a household member for purposes of determining the income-eligibility of the household. The child should be counted as a guest or as part of an "unofficial" foster care arrangement. Neither guests nor foster children can be included as household members for income-eligibility purposes {*HUD Handbook 4350.3, Figure 3-6*}.

In order to count a child who is under the age of 18 and not an emancipated minor as a household member for income-eligibility purposes, the LIHTC unit must be the child's permanent residence and another member of the household (who is listed on the lease and/or the CTE 320) must meet one of the following criteria:

(1) Have legal custody or guardianship of the child (as can be documented by court papers). The child may also be counted as a household member for income-

eligibility purposes in situations in which an adult is awaiting a decision from a court regarding custody or guardianship if this can be documented with legal papers {*HUD Handbook , Appendix 11, Item 19A*}. A situation in which an adult "intends" to pursue custody but has not yet done so is not adequate to establish eligibility; or

(2) Have claimed the child as a dependent on the most recently filed tax return (as can be documented by the tax return) <u>and</u> anticipate claiming the child as a dependent for the present calendar year; or

(3) Be in the process of adopting the child (as can be documented by court papers).

Ex: *The Smith family, which consists of two adults, are prospective residents in an LIHTC development. The Smiths have a seven month old grandchild who they have been caring for since birth. The mother and father of the child (neither of whom will live in the tax credit unit) are willing to sign a notarized statement (probably not legally binding in this situation) indicating that the living arrangement is unlikely to change in the next twelve months. The grandparents anticipate claiming the child as a dependent for the present calendar year. Since the grandparents do not have official legal custody or guardianship, are not in the process of adopting the infant, and have not yet claimed the infant as a dependent on their tax returns, the grandchild <u>cannot</u> be counted as a household member for purposes of determining eligibility to reside in the unit. The income-eligibility of the Smiths must be evaluated based on a two, not three, person family size. If the grandchild is claimed as a dependent for tax purposes this year by the grand parents for this calendar year and he or she continues to reside in the unit, the child can be counted as a household member the following year.*

Documentation of legal custody, guardianship or dependency status should be obtained for any child whose mother or father does not reside in the LIHTC unit if the tenant is attempting to count the child as a member of the household for income-eligibility purposes. It is not necessary for the owner/management agent to document custody or guardianship of children who reside in the unit with a parent (unless there is reason to believe that the child is not eligible to be counted as household members).

(2) <u>Occupancy</u>

The residency aspect of non-custodial children is discussed in The Fair Housing Act. The Fair Housing Act (Title VIII of the Civil Rights Act, 42 U.S.C. 3601) is a statute that, in part, prohibits discrimination based on familial status in most housing and housing-related transactions. The Fair Housing Act defines "familial status" as one or more individuals (who have not attained the age of 18 years) domiciled with:

1. A parent or another person having legal custody of such individual or individuals (regardless of age or number of children); or
2. The designee of such parent or other person having such custody, with the written permission of such parent or another person.

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.

LIHTC Compliance Policy # 7
June 2008

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).

LIHTC Compliance Policy # 7
June 2008

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.**

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
Low Income Housing Tax Credit Program

POLICY STATEMENT

COMPLIANCE MONITORING FEE FOR TAX-EXEMPT PROJECTS

EFFECTIVE JUNE 17, 2008

Effective with the issuance of MSHDA's 2008 Qualified Allocation Plan, compliance monitoring fees are as follows: All units for which an allocation of credit was not made by June 16, 2008 must pay the sum of $450 per low income unit, which amount will cover the entire 15 year monitoring period and the extended use period and is payable prior to issuance of Form 8609.

All projects that received an Allocation of credit prior to June 17, 2008 were allowed to pay $300 per low income unit regardless of the placed in service date.

Several projects that are financed with tax-exempt bonds received a Reservation of credit prior to June 17, 2008. Because the tax-exempt financed projects are subject to Section 42(h)(4) which exempts tax-exempt projects from the carryover requirement, and a Carryover Allocation can be issued only during the month in which the bonds were sold, only a Reservation and Commitment of tax credit were issued for these projects.

The Authority understands that the projects would have obtained a Carryover Allocation if necessary, and thus, will allow tax-exempt projects which received a Reservation and/or Commitment of tax credit prior to June 17, 2008, and which have been progressing toward completion with no interruptions, to pay $300 per low income unit regardless of the placed in service date.

EFFECTIVE JANUARY 1, 2001

On January 1, 2001, the following compliance monitoring fees became effective: All units for which an allocation of credit was not made by December 31, 2000 must pay the sum of $300 per low income unit, which amount will cover the entire monitoring period and is payable prior to issuance of Form 8609.

All projects that received an Allocation of credit prior to January 1, 2001 were allowed to pay $175 per low income unit regardless of the placed in service date.

Several projects that are financed with tax-exempt bonds received a Reservation of credit prior to January 1, 2001. Because the tax-exempt financed projects are subject to Section 42(h)(4) which exempts tax-exempt projects from the carryover requirement, and a Carryover Allocation can be issued only during the month in which the bonds were sold, only a Reservation and Commitment of tax credit were issued for these projects.

The Authority understands that the projects would have obtained a Carryover Allocation if necessary, and thus, will allow tax-exempt projects which received a Reservation and/or Commitment of tax credit prior to January 1, 2001, and which have been progressing toward completion with no interruptions, to pay $175 per low income unit regardless of the placed in service date.

Agency Estimate of Utility Allowances

Contents

Effective: June 15, 2020

Overview

On July 29, 2008 Treasury Regulation Section 1.42-10 was amended to add three additional methods for calculating utility allowances for conventionally financed Low Income Housing Tax Credit (LIHTC) projects. One of the additional methods is an Agency Estimate. The following instructions outline the procedures an owner of a LIHTC project must complete to request a utility allowance change using the Agency Estimate method. The Agency Estimate method uses a sampling of the tenants' past utility bills provided by the property owner to determine the monthly utility allowance for the upcoming year.

Timeline and Submission Requirements

At Move-in and Annual Renewal – Obtain Authorization to Release Utility Costs and Information forms from each household in the project and retain a copy in each household's file.

August 1st (150 days prior to the utility allowance change effective date) – Begin collecting the utility sampling data.

October 1st (90 days prior to the utility allowance change effective date) – Utility packages are due to MSHDA.

- All ***proposed utility changes must be made available to all tenants in the building.*** A sample posting notice is provided on the "UA Chg Notice" tab of the LIHTC Utility Template workbook. Notice is required even if the rent will not change. Refer to Treasury Regulation Section 1.42-10 for further details.

January 1st – Implement approved utility allowance changes.

Submissions

By October 1st or 90 days prior to the utility allowance effective date, submit the following items to the mshdacompli@michigan.gov mailbox with "UA Change, [Development Name], MSHDA #" in the subject line:

1. Excel Consumption Data Certification Workbook (Utility Template). Older versions will not be accepted, the latest version of the template can be found on the MSHDA Compliance Utility Allowance webpage.
2. Pdf of the signed Owner's Utility Allowance Certification (MSHDA Mgmt. 456D).
3. Pdf of the utility company backup documentation with:
    - The utility company identified on each page.
    - Unit type, unit number or unit address, and tenant name for each sampled household.

- Total billed amount (including taxes, service charges, and fees) for each month. *This requires at least one actual monthly bill each tenant receives directly from the utility company*.
- Verification that the utility rate in effect for the last billing of the sampling was in effect within 60 days of the posting notice. *Only required if the last billing cycle of the sampling does **not** end within 60 days of the posting notice date*.

  Note: The state network has a limit of 25 megabytes on the size of files e-mailed to the state. If backup documentation exceeds this limit the file will need to be zipped or broken into smaller files for submission.

The submission cover note should be to the attention of your assigned Compliance Officer. Submission forms are all located within the LIHTC Utility Template spreadsheet on the MSHDA Compliance Website. To access the utility allowance webpage, select the following links:

1. “Rental”.
2. Under the “Property Managers” heading, select “Compliance for Rental Housing”.
3. “Income, Rent, and Utility Limits”.
4. “Utility Allowances”.

The utility allowances direct web address is: Utility Allowance Webpage

Ineligible Properties

Projects may *not* update utility allowances using the Agency Estimate method described in this policy, if the project has:

- Unresolved noncompliance issues (including, but not limited to uncorrected 8823).
- Less than one year of actual consumption data available. New projects must use the PHA issued utility allowances for one year prior to switching to the Agency method. If a project has greater than 50% of its units excluded in the utility sampling, contact the assigned Compliance Officer for additional guidance.
- RHS assistance or is HUD-regulated. These projects must continue to use the required utility allowance as defined in the IRS Regulation Section 1-42.10.
- MSHDA-financing. These projects submit the utility sampling with the annual budget process to the MSHDA assigned Asset Manager according to the Asset Management Division Utility Sampling and Rent Schedule policy.

Sample Data Requirements

Utility samples must be collected within a 12-month sampling period **ending no more than 60-days prior to the notification/posting date of the Utility Allowance Change Notice.** If the sampling period does ***not*** end within 60 days of the posting notice, verify the utility rates in effect within 60 days of the notification are the same as the rates identified in the tenants' last monthly bills being sampled. When sampling:

- ***Only LIHTC units must be included in the sampling***.
- The same tenants must be sampled for all tenant-paid utilities. Thus, the units and tenant names only need to be entered on the Electric tab of the workbook and populate across all the other workbook utility tabs.
- Authorization to Release Utility Costs and Information – Utility companies require the submission of a tenant signed release authorization form prior to releasing utility data. The LIHTC Utility Template includes a recommended utility release authorization form.
- All samples within a specified utility type must cover the same date range as the other sampled units for that utility type.
- Owners/agents must collect and submit sample data separately for each project.
- Projects with similar building types may calculate one average for each unit type found in all the buildings. Unit types are based on number of bedrooms; the number of bathrooms in a unit does not change the unit type.
- Projects with different building types (townhouses versus multi-story buildings) or with a different heating source (gas versus electric) must calculate separate averages for each building type and each utility source.
- All units must include 10 ***full*** months (full billing cycles) of utility expense. Refer to exclusions below for further clarification.
- Project based voucher (PBV) units may be used when selecting units for sampling utilities if the PBV overlaps with a restricted unit.
- Consumers Energy encourages owners/agents to get connected to its landlord portal to gather utility information. Further information can be obtained by contacting 855-477-9027
- Consumers Energy posts 12 Month Electric and Gas Rate Averages on the Consumer's Energy website. Rate months are used four months after the reported period. E.g. The report dated April 2019 to April 2020 is the rate used for issuing August bills to tenants per Consumer's Energy.

The following utility sampling requirements must be met **for *each* unit type (1 bedroom, 2 bedrooms, etc.) based on the number of restricted units of that unit type:**

- The minimum sample size is identified in the following chart:

Number of Units	Minimum Sample
1-20	All
21-61	20
62-71	21
72-83	22
84-99	23
100-120	24
121-149	25

150-191	26
192-259	27
260-388	28
389+	29

- Utility allowances are a straight average of the sampled units. Do not drop one highest and lowest utility cost average from the sampling.

- ***Excluded Units*** – Do not enter data on the Electric, Gas, Water/Sewer, and Trash tabs for any of the following **exclusions**. A unit that:
  - Has been vacant for more than 2 full months (full billing cycles). For example, if the billing cycle is the 4th of each month and tenant A moves out February 28th and Tenant B does not move in until April 6th, three full billing cycles have been affected and the unit must be excluded.
  - Is receiving an increased utility allowance as a reasonable accommodation.
  - Is receiving a flat utility rate as part of a low-income rate assistance utility program.

- Additional sampling process suggestions/recommendations to follow ***if the sample size is greater than 20 units***:
  - Units sampled must provide a fair representation of the property.
  - Different units/tenants should be chosen annually whenever possible for the sampling in order to gain an accurate representation of the whole property over time.
  - If a specific unit type exists in eight different buildings, sample units are required from each of the eight buildings rather than only a few of the buildings.
  - The number of household members must be considered, and the sampling must not contain a disproportionate number of smaller member versus larger member households.
  - Request a greater sampling of units from the utility company than the required amount. This allows a buffer between the collected samples and the required sample size in case some samples do not meet the sampling requirements, such as the units to be excluded.

Eligible Utilities

Utilities that may be included and must be excluded from the utility allowance calculation are listed below. See Notice 2009-44 for more detail.

Utilities Included

Electricity.
Gas.
Water/Sewer.
Trash pickup.

Any item a tenant must pay in addition to rent including a range and/or refrigerator, if not supplied by the owner.
Taxes/fees paid directly to the utility company.

Utilities Excluded

Telephone.
Cable.
Internet service.
Any item that is a property expense paid with operating funds.
Optional items not included in the eligible basis.
Fees charged by a third-party billing company.

A utility allowance for all eligible tenant-paid utilities must be included as part of the gross rent. If management requires tenants to subscribe to certain excluded utilities, charges for those utilities are *not* included in the utility allowance calculation. However, such charges must be included in the gross rent calculation.

Administrative Fees

Administrative fees for approval of the Agency Estimate method of calculating the annual utility allowances will no longer be charged as of the effective date of this policy release.

MSHDA Review

MSHDA will review the entire submission for compliance with regulations and instructions. Please make sure the backup documentation is complete and legible to help expedite the approval process. MSHDA may request more information during the 90 days prior to the effective date. The information requested may include, but is not limited to the clarification of:

- Data for larger units calculating the same or lower average utility costs as a smaller unit.
- The difference appears extraordinary between the current UA and the proposed UA for a specific unit type in relation to the project's other unit type changes to UA.
- Any other anomalies in the UA data or changes to the unit types' utility allowances.

Owners/agents should receive a response from MSHDA within 45 days of the package submission. If the approval is not received within 45 days, please contact the assigned MSHDA Compliance Officer. Non-receipt of an approval notice is not considered approval by MSHDA.

Disclaimer
All allowances provided under this option are based upon information submitted by the property owner. Therefore, the owner assumes full responsibility and accepts the consequences if the information is later determined to be inaccurate.

Utility Allowance Implementation

MSHDA-approved utility allowances will be effective for twelve months. The owner is responsible for submitting a new request, at least 90 days before the expiration of the utility allowance in effect (October 1st). Failure to do so, and/or failure to notify the tenants at least 90 days prior to a UA change will result in a finding of noncompliance.

Approval of the Agency Estimated utility allowance does not constitute a guarantee the rents are correct. Management must review the approved utility allowance in relation to the current rents to verify that the gross rents remain restricted under section 42(g)(2).

Rent Decreases
The effect of new utility allowance must be considered for implementation. If the new gross rent exceeds the established LIHTC gross rent limit, then a decrease in the tenant-paid portion of rent must be implemented at the same time as the new utility allowance. Tenants should receive notice of the rent decrease prior to it becoming effective.

Rent Increases
If a utility allowance decrease allows for the tenant-paid portion of rents to potentially increase, then tenants must receive at least a 30-day notice of any rent increase. In addition, rent increases typically may only be implemented at a tenant’s lease renewal. All rent increases must be in accordance with Michigan Landlord Tenant Law and the terms of the tenants’ lease agreements.

Forms

LIHTC Comp. 9A – Instructions for Using the Consumption Data Certification Workbook
LIHTC Comp. 9B – LIHTC Utility Allowance Summary
LIHTC Comp. 9C – Tenant Utility Calculation Worksheets
LIHTC Comp. 9D – Owner’s Utility Allowance Certification (LIHTC Only)

LIHTC Compliance Policy #10
July 2014

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
Compliance Monitoring

POLICY STATEMENT

REQUIREMENTS FOR SUBSTITUTING A REAC OR RHS INSPECTION FOR A MSHDA INSPECTION

MSHDA's Compliance Monitoring unit realizes that developments often have several different inspections throughout the year. Through various initiatives, including the physical inspection PILOT, MSHDA's goal is to eliminate duplicative inspections. This policy establishes the proper procedures for responding to a HUD REAC or RHS inspection conducted in lieu of a MSHDA inspection. **Note: MSHDA reserves the right to conduct inspections on a more frequent basis, if MSHDA deems this necessary and appropriate based on the results of a previous inspection or for any other reason(s).**

To aid in the goal of reducing duplicative inspections, the following should be submitted upon receipt and/or at the conclusion of the REAC and RHS inspection processes. Failure to do so will result in the need to conduct a MSHDA inspection.

- Copy of the scheduling letter from REAC or RHS
- Copy of the inspection report
- MSHDA Owner Certification and Attachment A (as described in this policy)

INSTRUCTIONS FOR RESPONDING TO A REAC INSPECTION

When a REAC inspection is conducted in lieu of a MSHDA inspection as permitted by Physical Inspection PILOT, the owner/agent must respond to all deficiencies identified during the inspection.

1. EH&S must be addressed immediately (24 hours) and a written response must be submitted within 72 hours to HUD and a copy to MSHDA's Compliance Monitoring unit on the HUD Attachment A and Owner Certification.
2. The owner/management agent has up to 60 days from the date of the REAC inspection to address the remaining deficiencies found during the inspection.
    a. The correction of all deficiencies must be documented on the MSHDA Owner Certification and Attachment A. (These forms are found on the MSHDA website: http://www.michigan.gov/mshda/0,4641,7-141-8002_26576_26589-90761--,00.html) The REAC inspections will not be in MSHDA's Owner Physical Inspection Certification (OPIC) system and therefore the forms must be completed manually.
3. All physical inspection deficiencies must be corrected by the deadlines noted above. If, due to extenuating circumstances (including appeals to HUD REAC), any corrections cannot be completed on time, the owner/management agent may submit a request for an extension. The Extension Request Form must be e-mailed to Compliance Monitoring for approval. MSHDA will only approve an extension of up to 6 months from the date of the inspection. The Extension Request form is available on the MSHDA website.

4. As required by IRC Section 42, properties with LIHTC funding will have IRS 8823 forms issued based on deficiencies identified at the REAC inspection, if the property is within the initial 15 year compliance period.

INSTRUCTIONS FOR RESPONDING TO A RHS INSPECTION

When an RHS inspection is conducted in lieu of a MSHDA inspection as permitted by Treasury Regulation 1.42-5 and MSHDA's Memorandum of Understanding with the Rural Housing Service, the owner/agent must respond to all deficiencies identified during the inspection.

1. The owner/management agent has 60 days from the date of the RHS inspection to address the deficiencies found during the inspection.
   a. The correction to all deficiencies must be documented on the MSHDA Owner Certification and Attachment A (These forms are found on the MSHDA website: http://www.michigan.gov/mshda/0,4641,7-141-8002_26576_26589-90761--,00.html). The RHS inspections will not be in the Owner Physical Inspection Certification (OPIC) system and therefore the forms must be completed manually.
   b. Please enter all physical deficiencies (equivalent to HUD's UPCS deficiencies) cited in the RHS inspection, the corrective actions and the date corrected or planned to be corrected.
2. All physical inspection deficiencies must be corrected by the deadlines noted above. If, due to extenuating circumstances, any corrections cannot be completed on time, the owner/management agent may submit a request for an extension. The Extension Request Form must be e-mailed to Compliance Monitoring for approval. MSHDA will only approve an extension of up to 6 months from the date of the inspection.
3. As required by IRC Section 42, properties with LIHTC funding will have IRS 8823 forms issued based on deficiencies identified at the RHS inspection, if the property is within the initial 15 year compliance period.

CONTACT INFORMATION CONCERNING REAC/RHS INSPECTIONS

Please address and send all original signed documents to:

Michigan State Housing Development Authority
Attn: Compliance Monitoring
735 E. Michigan Avenue
PO Box 30044
Lansing, MI 48909

Email your requests to: mshdacompli@michigan.gov
Telephone #: 517-241-2560
Fax #: 517-335-0125

LIHTC Fee Schedule
December, 2020

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
Low Income Housing Tax Credit Program

POLICY STATEMENT

FEE SCHEDULE

The following schedule of fees applies to all LIHTC projects that apply for credit under the 2021 Qualified Allocation Plan:

Schedule of LIHTC Fees	**Fee Amount**	**Report Fees Paid on the Project Const form as:**
Application fee	$45 per low income unit, maximum $2,500	Tax Credit fees
Change of Ownership	2% of annual credit amount	Tax Credit fees
Changes in 8609 due to owner error/omission	$50 per 8609	Tax Credit fees
Changes in lots being used for scattered site projects	$250 per lot	Tax Credit fees
Compliance Monitoring fee	$475 per low income unit	Compliance fees
Exchange of credit	10% of annual credit amount	Tax Credit fees
Extended Use Fee for projects that receive an allocation of credit in 2011 and later	$25 per low income unit annually during extended use period	Compliance fees
Interim underwriting modifications	$500	Tax Credit fees
Late fees for not paying fees within stipulated time, or not meeting "Conditional Go" deadlines	$50 per day late	Tax Credit fees
LIHTC Deadline Extension fee	1% of annual credit amount	Tax Credit fees
Market study fee	Contact MSHDA's Chief Market Analyst for fee amount	Marketing Study
No-show fees for not showing up at a scheduled physical inspection or tenant file audit	$100	Compliance Fee
Non-sufficient fund check	$100	Tax Credit fees
Physical Inspection fee for projects that received an allocation prior to 2001	$30 per unit inspected or 20% of low income units at $30 each	Compliance Fee
Significant and repeated noncompliance issues	$50 per unit	Compliance fees
Site visits – subsequent to initial visit	$500	Tax Credit fees
Tax Credit Reservation fee	6% of annual credit amount	Tax Credit fees

LIHTC Fee Schedule
December, 2020

Schedule of LIHTC Fees	Fee Amount	Report Fees Paid on the Project Const form as:
Waiver Requests (ex. project limits, extensions, etc.) (submit request prior to application)	$500	Tax Credit fees

All waiver requests must be submitted in writing.