



HOUSING TAX INCREMENT FINANCING PROGRAM

FREQUENTLY ASKED QUESTIONS

December 6, 2023

The following **Frequently Asked Questions (FAQs) and Answers** are for informational purposes only. This document is not binding. Applicants should refer to the MSHDA Housing Tax Increment Financing (Housing TIF) Program Statement, the joint MSHDA-EGLE-MEDC brownfields guidance, and accompanying documents for most-recent guidance. All applicants are strongly encouraged to consult with MSHDA staff before formally submitting a Housing Tax Increment Financing application.

Please contact MSHDA via e-mail (MSHDA-TIF@michigan.gov) should you have any additional questions or have a need for additional clarification regarding the subjects reviewed below.

GENERAL APPLICATION

Q: Is there a “format” that applicants should use to submit Housing TIF Work Plans?

A: *Yes. Applicants should follow the format under “Addendum II – Work Plan or Combined Brownfield Plan Review Criteria Programmatic Parameters” of the MSHDA Housing TIF Program Statement, as adopted on September 29, 2023, when submitting applications.*

DEMONSTRATION OF HOUSING NEED

Q: Can a local BRA/community rely on a regional needs assessment for the need requirements? How formal of a housing study is needed? Is the mention of housing needs in a Master Plan sufficient, or would it be necessary to use that AND the statewide housing plan?

A: *A Regional Housing Plan is one of the allowable options for demonstrating alignment of the housing project with the “housing needs” of the area. It is recommended that a Local or Regional Housing Study that is being used to demonstrate alignment with housing needs is adopted by the local municipality and affirmed by the local municipality as an accurate representation of the local or regional needs prior to submission of the Brownfield Plan or Work Plan to MSHDA.*

MSHDA believes that, in most cases, a Master Plan that outlines the local housing needs in detail will be sufficient to demonstrate alignment of the housing project with local housing needs; however, a Master Plan that provides no detail or documentation for housing needs will not be sufficient.

ELIGIBLE ACTIVITIES

Q: **Must the developer maximize all other eligible activities before you utilize the eligible activities of "Housing Gap?"**

A: *No. An affordable or subsidized housing project seeking MSHDA approval where the Total Housing Subsidy calculation generates a larger value than the Approved BRA TIF Request may choose to classify all of the TIF capture as “Financing Gap”.*

On the other hand, a housing project where the Total Housing Subsidy calculation generates a lower value than the Approved BRA TIF Request will be required to classify a portion of the TIF Capture as other eligible activities outside of the "Financing Gap" to utilize the entire TIF Capture.

Q: **In a project that combines market-rate and affordable and that needs infrastructure and site preparation activities to support the development, can that infrastructure cost be captured in full, or would it be proportional to only the units that are affordable below 120% AMI?**

A: *The infrastructure costs will likely be eligible to be captured in full. MSHDA defines infrastructure as:*

“All fundamental physical development activities, that are not EGLE eligible activities, and that are necessary for the proposed affordable housing, or directly support the housing development activities, or are safety improvements necessary for the proposed affordable housing project and that may be available for public use. Examples include, but are not limited to, water/sewer connectivity, sidewalks, driveways, development drives, and parking areas/structures. Additionally, green-build features, like solar panels and electric vehicle charging stations, would be considered an eligible infrastructure activity if there is a direct benefit to the proposed eligible housing property.”

Since, in most cases, it would not be possible to create the affordable housing units without incurring all of the infrastructure costs, MSHDA believes that all infrastructure costs will be eligible for capture regardless of whether all the units are affordable or a mix of affordable and market-rate, unless the infrastructure is an EGLE eligible activity.

Q: Do infrastructure and site preparation activities that support Section 13b(4)(b) affordable and/or subsidized housing need to be public or in the right-of-way?

A: *No. Infrastructure and site preparation activities that meet the infrastructure definition listed above will be eligible regardless of whether they are public, in the right of way, or private and owned by the development.*

Q: If the municipality decides to issue municipal bonds for the public infrastructure, and seeks reimbursement through the BRA for the debt service, is it fair to assume that the municipality's costs for the infrastructure, including financing costs, can be included in the calculated Potential Development Loss (PDL)?

A: *Infrastructure is defined in the Housing TIF program as follows:*

“All fundamental physical development activities, that are not EGLE eligible activities, and that are necessary for the proposed affordable housing, or directly support the housing development activities, or are safety improvements necessary for the proposed affordable housing project and that may be available for public use. Examples include, but are not limited to, water/sewer connectivity, sidewalks, driveways, development drives, and parking areas/structures. Additionally, green-build features, like solar panels and electric vehicle charging stations, would be considered an eligible infrastructure activity if there is a direct benefit to the proposed eligible housing property.”

Under the Housing TIF program, both Total Housing Subsidy (THS) and Infrastructure are eligible activities. The Potential Development Loss (PDL) is merely a factor used in calculating the THS. Infrastructure does not play a part in the THS calculation and, therefore, the PDL calculation does not take into account Infrastructure costs. However, a municipality may choose to issue bonds to cover some of the Housing TIF-eligible costs and use the Housing TIF as a way of paying the debt service on the bonds.

Q: Will the amount of TIF for housing development activities approved under a plan be limited to the total amount of TIF projected to be generated over the life of the plan, or can the approved amount of TIF exceed the amount of TIF projected?

A: *The TIF reimbursement amount will be limited to the amount approved by the BRA. That being said, the total amount of TIF Capture that a MSHDA-approved housing development will be eligible to utilize will not be greater than the amount of TIF generated over the life of the plan, based on the number of years and total amount approved by the BRA.*

Q: Why would a project need to submit to MEDC, EGLE, and MSHDA for TIF when the eligible activities seem to overlap? If the only eligible activity is "Financing Gap", does the plan need approval from MEDC and EGLE?

A: *MSHDA does not believe that there will be very many cases that will require both MSHDA and MEDC approval for the same project. This is due to the mechanics of the Housing TIF program and how the eligible activities are defined. However, MSHDA and MEDC have been working together to ensure that any projects that require the approval of both agencies will utilize a streamlined*

approach with cross-agency communication and minimal duplication of processes wherever possible. EGLE eligible activities must be submitted to EGLE in addition to the submission to MSHDA or MSHDA and MEDC, because MSHDA cannot review and/or approve activities that are EGLE eligible activities.

Q: Can a developer submit a Brownfield Plan where all or nearly all of the capture is related to housing development eligible activities?

A: Yes.

HOUSING SUBSIDY/GAP

Q: Is the THS (Total Housing Subsidy) meant to serve as a cap on the entirety of a TIF reimbursement request, or is it a cap strictly related to determining the potential financing gap that is eligible to be reimbursed?

A: *The Total Housing Subsidy (THS) is meant to be a way of evaluating the reasonableness of the Financing Gap amount that is being included in the sources and uses. It is not a cap on the entirety of the TIF reimbursement request.*

As an example, let's assume that the TIF reimbursement request is \$1,450,000. Let's also assume that the THS calculates out to \$1,054,000. The developer would be eligible to include a "Financing Gap" line item in their sources and uses of no more than \$1,054,000. However, let's also assume that there were eligible infrastructure and site preparation costs in the amount of \$500,000. If the BRA approves it, the developer could include the remaining \$396,000 (\$1,450,000 - \$1,054,000) as infrastructure and site preparation in their sources and uses, which would allow them to capture the entire \$1,450,000 in TIF reimbursement.

Q: Are there concerns for work plan approvals if the MSHDA TIF gap calculation outputs a much greater amount than the TIF is anticipated to support?

A: *The PRL/PDL and THS calculations are intended to be used for testing the reasonableness of a request to utilize TIF Reimbursement for Housing Activities. If the approved TIF reimbursement request is well below the calculated THS, it will not cause issues from a MSHDA review standpoint. However, wide variances between the PRL/PDL/THS calculation and the amount of approved TIF reimbursement should cause practitioners to take another look at the costs and financing structure of the development to ensure that the financing assumptions are sound.*

Q: What would the documentation for the rental financing gap look like for requesting reimbursement? Would this be a calculation provided yearly to the BRA with documentation of

yearly rent, and proof residents are within AMI? Would this be concurrent with the ongoing monitoring and reporting?

A: *The rental financing gap is a one-time calculation and review that is completed in conjunction with MSHDA's review and approval of the Brownfield Plan. It is not an annual calculation. There are other annual reporting requirements that the BRA will be required to provide to MSHDA.*

Q: **It is expected that projects would have both income-restricted units and units that are not income-restricted. The PRL (Potential Rent Loss) gap calculation is only related to the income-restricted units, but what if the overall project still has a gap that is larger than the cost of site prep, demolition, etc.? Does the "reasonableness" test apply to the overall housing project, or just the portion of the project that has income-restricted housing?**

A: *The Potential Rent Loss (PRL) and Potential Development Loss (PDL) calculations are an approximation of the subsidy that is necessary to offer units (rental or for-sale) at affordable rents or prices. Therefore, the PRL and PDL calculations only cover the units in the project that will be restricted to affordable rents or prices.*

However, please keep in mind that the PRL/PDL and Total Housing Subsidy (THS) calculation is only one way to include TIF Capture in the Sources and Uses for the project. Projects that have excess TIF Capture over and above the THS could use that excess TIF Capture towards other eligible activities such as infrastructure, demolition and renovation, site preparation, etc. that the project will be incurring.

AFFORDABILITY REQUIREMENTS

Q: **Does MSHDA have specific requirements regarding target AMI's for affordability of rental units, or affordability periods for rental units?**

A: *At this time, MSHDA is not establishing parameters that require a certain number of housing units in the development be at specific Area Median Income (AMI) levels. Likewise, MSHDA is not requiring a target affordability period for the affordable units. These types of decisions will be negotiated at the local level based on the local needs and the feasibility of offering units at various AMI targeted levels.*

The Housing TIF program requires that projects have units targeted at 120% of AMI or below. MSHDA is not specifying how many of the units in the development need to be targeted at 120% AMI or below. Again, this is a local decision that the Brownfield Redevelopment Authority and the developer should negotiate in order to determine that the local housing needs are being met. The minimum term of affordability for those 120% AMI units is the length of the TIF reimbursement, but a local municipality/BRA may choose to require a longer affordability period, at their discretion.

Q: Is the gap calculation term limited to 25 years as shown on the PRL example? Can the Affordability Period extend beyond length of TIF payoff?

A: *The Projected Rent Loss (PRL) example was purely for illustrative purposes to better show how the PRL is calculated and utilized. A local municipality/BRA could certainly choose to require an affordability period that extends beyond the length of the TIF reimbursement. Those decisions will be made at the local level.*

Q: Will there be an affordability agreement the developer has to enter in to? If so, what will the length be and how will that be enforced?

A: *MSHDA will not require a deed restriction or an affordability agreement be recorded against the property. However, MSHDA will record a notice on the public record that references the Section 13b(4)(b) required development agreement or reimbursement agreement between the municipality or local BRA and the owner or developer of the eligible property that stipulates price and income monitoring for residential units. That agreement will memorialize the price and income restrictions and their duration. The local municipality/BRA may have affordability requirements, and various means of enforcing those requirements.*

MSHDA REVIEW

Q: How does the timing of MSHDA review overlap with timing of MEDC/MSF approval for state capture?

A: *MSHDA does not believe that there will be very many cases that will require both MSHDA and MEDC approval for the same project. This is due to the mechanics of the Housing TIF program and how the eligible activities are defined. However, MSHDA and MEDC have been working together to ensure that any projects that require the approval of both agencies will utilize a streamlined approach with cross-agency communication and minimal duplication of processes wherever possible.*

Q: Are any other specific State and/or Federal housing regulations such as prevailing wages, fair housing, ADA, etc. required under the Housing TIF Program.

A: *The Housing TIF program does not have additional construction/labor requirements over and above the state and local requirements that are standard in any housing development, unless otherwise required by the local municipality/BRA. Prevailing wage is not triggered by the Housing TIF program. Developers and management companies should ensure that all other requirements that are standard in any housing development are being met.*

Q: Will MSHDA require compliant Phase I ESA, Phase II ESA, BEA, or any other sign-offs from EGLE if they are not required by other programs?

A: *A proposed housing development work plan must include an environmental review that meets MSHDA's Environmental Review Requirements found on MSHDA's website. If the environmental review discloses that the proposed housing development site has environmental contamination, then MSHDA staff will be reviewing to see if EGLE has provided the appropriate clearance for residential development. If documentation does not exist that evidences EGLE has provided the necessary clearance for residential development, then the work plan or combined brownfield plan may be conditionally approved (assuming it meets other requirements) subject to EGLE clearance of the site for the proposed residential development.*

Q: **For projects where state/school taxes are not requested (i.e., local only taxes utilized) will plans still need to be reviewed and approved by MSHDA?**

A: *If a Brownfield Plan is not including the use of taxes levied for school operating purposes, then the Brownfield Plan does not require the review and approval by MSHDA.*

Q: **How did you arrive at a 10% maximum developer fee and profit?**

A: *The 10% maximum developer fee/profit was an estimate based on previous discussions with housing and building trade organizations. The intention of capping the developer fee and profit is to ensure the local and state resources are being spent appropriately while also balancing the need to be in line with the market in order to allow the program to work for developers/builders and provide the correct incentives. After further evaluation of this metric, MSHDA will be increasing this maximum to 15%. Additionally, MSHDA is considering whether further allowances should be made for overhead and other costs over and above the 15% developer fee and profit.*

HOUSING TIF INTERACTION WITH PILOT/OTHER PROGRAMS

Q: **How does this program work if a project has a PILOT agreement in place?**

A: *The topic of the interaction between a Housing TIF and a PILOT is still under analysis. One example of a possible scenario for how they may interact together is a property that utilizes a PILOT agreement for years 1-15 and then has a Housing TIF that covers years 16-25. Whether this is a structure that is beneficial for projects to utilize is subject to the review and analysis of the development team and the municipality/BRA. Another example of a possible PILOT/TIF project is where the property was previously tax exempt and thus paid zero (\$0) taxes. In that instance, the PILOT may be captured as the TIF at 100% based on local approval. If a project involves both a TIF and a PILOT, the terms of each and the intended plan for interaction between the two should be addressed.*

Q: **Will a Housing TIF meet the requirements for a Tax Abatement under the LIHTC QAP? Will MSHDA be issuing further guidance in this area?**

A: Section C.14 Tax Abatement, of the Scoring Criteria under the 2024-2025 Qualified Allocation Plan (QAP) states,

“MSHDA will consider awarding these points for alternative tax incentive structures such as Tax Increment Financing (or other structures) that meet the intent of reducing the property tax burden and have a duration at least as long as is otherwise required under this section. Applicants with these alternative forms of tax incentives are encouraged to contact MSHDA staff prior to the funding round to determine whether the tax incentive structure will qualify for these points.”

A Housing TIF may qualify for Tax Abatement points under Section C.14 of the 2024-2025 QAP Scoring Criteria as long as the duration of the Housing TIF and positive impact to the financial viability of the housing property is comparable to the impact that would otherwise be generated by a Payment in Lieu of Taxes. As MSHDA begins to see more examples of LIHTC developments utilizing Housing TIF, further guidance will be issued as necessary.

BROWNFIELD REDEVELOPMENT AUTHORITY COVERAGE

Q: What if the municipality you're looking to develop in does not have a BRA? Will MSHDA provide technical support to BRA's that are trying to figure out how to implement this at the local level?

A: *MSHDA has been working with the Michigan Municipal Services Agency to develop a potential solution for communities throughout the state that would like to use the Housing TIF program to support attainable housing, but do not have a BRA. Further information on this topic will be available soon.*

MISCELLANEOUS

Q: What should be the approach if the market area of the development does not have good comparables to justify financing with a lender? Does the PDL calculation support development in an area where there are lower neighboring values?

A: *The Potential Development Loss (PDL) calculation uses Development Costs and an estimation of an Affordable Mortgage in order to calculate the Total Housing Subsidy (THS). Therefore, an area that cannot find good comparables should not be hindered by the PDL calculation. However, for single-family home projects, developers should be diligent to ensure that houses that are being built with the intention of being sold will have sufficient comparables in order to avoid challenges with homebuyers qualifying for sufficient end-financing in order to purchase the home. Communities and developers should also consider whether the lack of good comparables is a result of insufficient capacity to supply houses at the targeted price points or a result of insufficient need in the community. All applications will need to demonstrate a local need for the proposed housing as part of seeking MSHDA approval.*

Q: To use housing development costs as eligible expenses, must a Brownfield Plan include the capture of school operating taxes?

A: *If a Brownfield Plan is not utilizing taxes levied for school operating purposes, then the plan is not required to be reviewed by MSHDA. Municipalities/BRAs are not required to utilize taxes levied for school operating purposes as part of the Brownfield Plan.*

Q: In a single-family, home ownership TIF, the principal resident's exemption reduces the education tax to 6 mils. In a traditional Brownfield TIF the Michigan Strategic Fund takes 3 of the 6 mils. Assuming it's a housing only TIF will MSHDA capture the 3 mils.?

A: *Section 13b(14), provides that "[n]otwithstanding anything to the contrary in this act, for a brownfield plan that includes the capture of taxes levied for school operating purposes from each eligible property included in a brownfield plan after January 1, 2013, an authority shall pay to the department of treasury at least once annually an amount equal to 50% of the taxes levied under the state education tax act, 1993 PA 331, MCL 211.901 to 211.906, including 50% of that portion of specific taxes attributable to, but not levied under, the state education tax act, 1993 PA 331, MCL 211.901 to 211.906, that are captured under the brownfield plan until the expiration of the earlier of the following[.]"(Emphasis added.)*

Sec. 8a. (1) The state brownfield redevelopment fund is created as a revolving fund within the department of treasury to be administered as provided in this section. The state treasurer shall direct the investment of the state brownfield redevelopment fund. Money in the state brownfield redevelopment fund at the close of the fiscal year remains in the state brownfield redevelopment fund and does not lapse to the general fund.

Sec. 8a(3) The state brownfield redevelopment fund may be used only for the following purposes:

(e) To distribute revenue deposited in the state brownfield redevelopment fund from a brownfield plan that includes housing development activities and that was approved by the Michigan state housing development authority under section 13b(4)(b) to the housing development fund created in section 23 of the state housing development authority act of 1966, 1966 PA 346, MCL 125.1423