



M E M O R A N D U M

**TO:** Interested Parties  
**FROM:** Chad Benson, Low Income Housing Tax Credit (LIHTC) Allocations Manager  
**DATE:** June 13, 2018  
**RE:** Income Averaging Guidance

---

On March 23, 2018 the Consolidated Appropriations Act of 2018 permanently established income averaging as a third minimum set-aside election for Housing Credit developments, which owners could choose in lieu of the two previously existing minimum set-aside elections (40% of units at 60% Area Median Income (AMI) and 20% of units at 50% AMI). The income averaging election allows developments to target units to households with rent and income up to 80% AMI as long as the average AMI level of the affordable units in the project is 60% AMI or less. Additionally, at least 40% of the total units in the development need to be rent and income restricted.

This election allows developments to target a percentage of its units at higher rent and income levels (80% AMI and/or 70% AMI) by agreeing to target a percentage of its units at lower rent and income levels (50% AMI, 40% AMI, 30% AMI, and/or 20% AMI). Deep rent/income targeting has historically been a high priority in Michigan, so this new election may create opportunities for developments to attract additional net operating income with rents above the 60% AMI rent limit or at least broaden the tenant selection pool for certain units by targeting households with incomes above 60% AMI. However, applicants should be aware of the fact that some rental markets in Michigan are not strong enough to support the lease-up of units with rents that are above the 60% AMI level and that in all cases the market study will need to demonstrate that there is demand for units at the rents that are being projected.

Further, owners should be aware of the potential compliance risks that are associated with incorporating this election into their project. With little guidance that has been issued thus far, it is possible that the compliance requirements, such as the next available unit rule, could be far more demanding than in the typical LIHTC transaction and owners should carefully seek to understand the impact and weigh the benefits and burdens. This is true specifically for mixed-income developments that have a mix of affordable and market rate units. It is highly recommended that owners who are seeking to utilize income averaging work with their management agent, investor/syndicator, lender, and LIHTC compliance experts to ensure that electing to utilize income averaging will be a practical approach and will not cause undue LIHTC compliance risk or challenges.

Therefore, MSHDA is issuing the following guidance to owners who are considering using the income averaging election in their application.

New Proposals:

MSHDA does not intend to restrict the use of income averaging to specific developments. Therefore, 9% LIHTC developments as well as 4% LIHTC/Tax Exempt Bond developments will be eligible to make the income averaging election. However, all applicants should note the following requirements:

- a. All applicants that propose to utilize the income averaging election will need to order a market study through MSHDA that specifically reviews the marketability of the development with the proposed rent and income targeting levels. If the market study does not support the proposed rent levels, the proposal may be rejected or required to reduce rents to a lower level.
- b. Applicants that are proposing to utilize the income averaging election in a 4% LIHTC/Tax-Exempt Bond development must be aware that the income averaging election is only available for the LIHTC program and is not a possible election in the Tax-Exempt Bond program. Therefore, applicants are cautioned to ensure that the proposed project meets the requirements of both the income averaging election for LIHTC purposes and the minimum set-aside election for Tax-Exempt Bond purposes.
- c. All applicants (9% and 4%) choosing to utilize the income averaging election must obtain evidence from all funding providers (syndicator/investor, lender(s), etc.) to demonstrate that they have reviewed the income averaging election and are comfortable proceeding with the use of that election for the proposed development.
- d. Applicants that are submitting a 9% LIHTC application as part of a funding round, and who are choosing to use the new income averaging option, will be required to incorporate the use of the income averaging election into their application. MSHDA staff will be making any necessary revisions to the Program Application to allow this election to be incorporated.
- e. Likewise, applicants that are submitting a new 4% LIHTC/Tax-Exempt Bond application to MSHDA that is utilizing the income averaging election will be required to reflect that in their submission to MSHDA. MSHDA staff will be making any necessary revisions to the applicable program documents to account for the potential utilization of income averaging.

Developments that have been approved but have not received Form 8609:

If a development has previously been approved for LIHTC utilizing the 40% at 60% AMI election or the 20% at 50% AMI election, but has not yet received Form 8609, MSHDA will consider requests to utilize the income averaging election on a case-by-case basis. In these cases, owners should note the following requirements:

- f. MSHDA staff will reserve the right to order a new market study (at the owner's expense) if it is determined that the proposed rent/income levels could result in a negative impact to the overall marketability of the development. However, it is anticipated that if the income averaging election is being made to allow the renting of units to a larger tenant pool, while not altering the rents, a new market study would not be needed.
- g. Owners will be required to submit a new application complete with updated operating projections so that MSHDA staff can make a determination of whether the project maintains feasibility with the changes being requested. MSHDA staff reserve the right to request additional documentation to review the financial feasibility of the development and to ensure that the changes being requested

would not have impacted the scoring and ranking of the initial application in the LIHTC Funding Round or Notice of Funding Availability (NOFA).

- h. Owners will be required to submit documentation from all funders (syndicator/investor, lender(s), etc.) to demonstrate that they have reviewed the income averaging election and are comfortable proceeding with the use of that election for the proposed development.

Owners and Applicants are encouraged to review other available guidance on this topic as well as look for further guidance that may be released from other sources to help navigate this issue. If you have questions, please contact Chad Benson at (517) 373-3433.