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Income-Averaging Draft Policy

Staff at the Missouri Housing Development Commission (MHDC) are soliciting questions, comments, and suggestions on the following draft policy regarding Income-Averaging. Income-Averaging is a new minimum set-aside election option for federal Low-Income Housing Tax Credit (LIHTC) developments. Comments will be solicited until **Wednesday, August 22, 2018**.

Please send questions, comments, and suggestions regarding Income-Averaging Draft Policy to:

comments@mhdc.com

Webinar

MHDC staff will be hosting a webinar for interested parties to discuss MHDC's proposed draft policy regarding Income-Averaging.

The purpose of this webinar is to:

1. Discuss the new Income-Averaging provision;
2. Review MHDC's proposed draft policy regarding Income-Averaging;
3. Address a summary of questions and comments received prior to the webinar; and
4. Solicit any additional comments, questions, or suggestions.

Comments received on or before **Friday, August 10, 2018** may be discussed during the stakeholder webinar.

Participants of the webinar will be in listen-only mode, but we will take questions during the webinar using the "Questions" tool within the GoToMeeting. Instructions for using this tool will be provided during the call.

The Income-Averaging Draft Policy has been posted on the MHDC website at www.mhdc.com under the Special Notices section.

To attend Webinar:

Date: **Wednesday, August 15, 2018**

Time: **10:00 AM**, Central Daylight Time

GoToWebinar Registration: <https://attendee.gotowebinar.com/register/4602821048613464321>

- Once you register, an individual link will be sent to the email that you used for registration.
- There are some limitations to the number of attendees, please view with others in your organization when possible.
- GoToWebinar can be accessed using any computer, tablet, or SmartPhone.

Average-Income Minimum Set-Aside

Missouri Housing Development Commission (MHDC) Draft Policy

What is income-averaging?

In March, 2018 The Consolidated Appropriations Act of 2018 permanently established income-averaging, or the Average-Income (AI) minimum set-aside as a third minimum set-aside election option for federal Low-Income Housing Tax Credit (LIHTC) developments. The AI minimum set-aside allows developments to serve households earning up to 80% of the Area Median Income (AMI) in credit-qualified units, so long as the average income/rent limit in the development is 60% or less of AMI. Owners electing the AI minimum set-aside must commit to having at least 40% of the units in the development affordable to eligible households.

The AI minimum set-aside applies to the designated income/rent levels of the units, not the incomes of the tenant households. The designated income/rent levels may only be set in 10% increments, beginning with 20% AMI through 80% AMI.

Draft Policy

- At time of application, a development intending to elect the AI minimum set-aside will:
 - Designate in the application what minimum set-aside election will be made on IRS Form 8609.
 - Acknowledge the minimum set-aside election made on the application is irrevocable.
 - Acknowledge that if AI is the minimum set-aside election, the ownership entity must also elect that all buildings in the applicant's development are "part of a multiple building project" on IRS Form 8609.
 - Submit statements from every non-MHDC funding source acknowledging the intent to operate the development under the AI minimum set-aside.
 - Submit a statement from the proposed management company, acknowledging the intent to operate the development under the AI minimum set-aside.
 - Acknowledge that if a development: 1) contains market units (above 80% AMI); and 2) intends to operate the development under the AI set-aside, the development must submit a legal opinion letter before firm commitment that the proposed unit mix is in compliance with the Code.
 - The market study submitted with the application must affirmatively support the operation of the development under the AI minimum set-aside.
- The AI minimum set-aside election will not be allowed for resyndicated developments.
- Subject to final Commission approval, the election of the AI minimum set-aside will only be allowed for developments approved under the 2019 Qualified Allocation Plan (QAP) and subsequent QAPs.
- Developments that elect the AI minimum set-aside will be subject to an increased per-unit compliance monitoring fee.
- The management company for a development that elects the AI minimum set-aside will be required to provide certification of additional training on the AI minimum set-aside prior to

lease-up of the development. MHDC will provide future guidance on which trainings are acceptable.

- The unit designations will be allowed to float throughout the project, but AMI designation for each unit will remain fixed and will be recorded in the Land Use Restriction Agreement (LURA).

Example:

10-Unit Project
5 – 50% AMI Units
5 – 70% AMI Units

There will always be five, 50% AMI units and five, 70% AMI units in the development, how the units are distributed throughout the buildings may vary during the life of the project.

- Skewing the unit configuration, where unit AMI designations are not reasonably distributed throughout the development, will not be allowed in the initial unit designations and throughout the affordability period.
- With the allowance of the AI minimum set-aside election, the Workforce Housing Priority as well as the 50% AMI priority will be removed from the 2019 and subsequent QAPs.
- The management company shall maintain, and regularly update, a list indicating AI set-aside unit designations. This list will assist in monitoring ongoing minimum set-aside compliance. An up-to-date copy of this list must be made available on site during periodic audits conducted by MHDC.

Other Considerations

- MHDC will not likely require, but will strongly recommend, that a development proposing to operate under the AI minimum set-aside election does not configure their unit designation average at exactly 60% AMI.

Example:

10-Unit Project
5 – 50% AMI Units
5 – 70% AMI Units

The average AMI is 60%. If one of the 50% AMI units goes over income, then it could be interpreted as the average AMI is over 60% and therefore the development is not meeting the minimum set-aside test.

Failure to meet the minimum set-aside test carries significantly harsher consequences, including loss of previously claimed accelerated credits for that building, and ineligibility to claim future credits.

Because IRS has yet to comment or give guidance on the AI minimum set-aside election, it is not clear if this scenario would be seen as failing the minimum set-aside test.

- Bond Developments: Please note that the law did not change the minimum set-aside for bond-financed developments, but the AI minimum set-aside election is permissible to use with Tax-Exempt Bond developments. The development must meet both the bond and the LIHTC requirements. Bond minimum set-aside requirements remain 40/60 or 20/50.

- Use with other Program Funding: Please note that calculation method for determining income/rent limits for LIHTC units may not align with other programs, specifically HOME and the NHTF. MHDC will monitor those designated units for the most restrictive applicable funding source.