ihcda

Indiana Housing & Community Development Authority

To: Real Estate Department Partners **Notice: RED-18-26**
From: Real Estate Department
Date: May 2, 2018
**Re: Income Averaging Policy for 9% LIHTC Developments**

*Note: This RED Notice specifically addresses the applicability of income averaging for 9% LIHTC developments. For IHCDA's policy on income averaging for 4% LIHTC / tax exempt bond developments, see RED Notice 18-20. IHCDA will issue future guidance on compliance requirements and reporting.*

**What is Income Averaging?**

Income averaging is a new minimum set-aside election under Section 42 of the Internal Revenue Code as authorized by The Consolidated Appropriations Act of 2018. Instead of electing the 20/50 or 40/60 minimum set-aside, an owner may instead elect an income averaging set-aside. Income averaging allows a property to serve households up to 80% of area median income, as long as (1) at least 40% of the total units are rent and income restricted and (2) the average income limit for all tax credit units in the project (as defined by the 8609 Line 8b election) is at or below 60% AMI. Income limit options under income averaging are expanded to include 20%, 30%, 40%, 50%, 60%, 70%, and 80% AMI designations.

The owner must elect to designate a certain number of units at the various income limits in order to demonstrate that the unit mix will result in a project-wide average income limit of 60% AMI or less. Averaging is based on the AMI level assigned to the unit, not on the actual income of the household residing in the unit. AMI designations are allowed to float between units within the project (i.e. a particular unit isn't locked into a specific AMI level) but the total unit mix must be maintained. The agreed upon unit mix will be identified in the recorded extended use agreement and in the final application.

For income averaging, rent restrictions must match the income restrictions. For example, a unit considered 40% AMI must be rented to a household at or below the 40% AMI income limit and gross rent must be at or below the 40% AMI rent limit.

**Applicability to 9% LIHTC Developments Funded in 2018 Round**

IHCDA will allow any 9% LIHTC development that received a reservation of 2018 tax credits in February 2018 to request a modification in order to follow the income averaging rules.

IHCDA cannot entertain any modification requests for projects that have already been issued 8609s. The minimum set-aside election, once elected, is irrevocable. Therefore, income averaging cannot be retroactively applied to existing projects. In addition, IHCDA has made the policy decision to not allow an income averaging modification request for any development that received a reservation of credits prior to the 2018 round, regardless of whether or not that development has been issued 8609s.

To request a modification, the owner must submit the following information to Peter Nelson, IHCDA's Rental Housing Tax Credit Specialist (pnelson@ihcda.in.gov):

- IHCDA's Income Averaging Minimum Set-Aside Request Form (posted below this RED Notice).
- Updated pages of Form A, including but not limited to pages reflecting minimum setaside election, unit mix, rents charged, and the proforma
- Update from the market analyst confirming that they have reviewed the proposed changes in income targeting and rents charged and that the changes will not negatively impact market demand
- Per QAP policy on modifications, a modification fee of $1000 plus an additional fee of $1500 if the recorded lien must be amended and re-recorded.
    - Owner must work with IHCDA to amend the extended use agreement (Lien and Restrictive Covenant Agreement) if already recorded. The lien must reflect updated income and rent restrictions applicable to the project.

Approval is subject to IHCDA's confirmation that (1) the owner's proposed plan meets the income averaging requirements and (2) the application still meets IHCDA's underwriting and market study threshold requirements. IHCDA will not approve any request that results in a decrease in the total number of tax credit units committed to in the initial application. In addition, **the request to convert to income averaging cannot result in any change in score, including scoring related to rent restrictions**. All scoring commitments must remain the same as committed in the initial application.

**Applicability to 9% LIHTC Developments in Upcoming 2019 Round**

Any application to be submitted in the 2019 tax credit round (applications due July 30, 2018) may request to utilize an income averaging minimum set-aside. IHCDA will release a revised application form (Form A) that includes the necessary elections and income/rent levels.

No threshold or scoring categories of the 2018-2019 Qualified Allocation Plan will be amended. All applications in the 2019 round must follow the established threshold and scoring criteria, including the existing scoring matrix for rent restrictions. If selecting income averaging, the income and rent restrictions on a unit must match. For example, a unit considered 40% AMI must be rented to a household at or below the 40% AMI income limit and gross rent must be at or below the 40% AMI rent limit.

**Questions**

Questions about this policy can be directed to Peter Nelson (pnelson@ihcda.in.gov), Alan Rakowski (arakowski@ihcda.in.gov), or Matt Rayburn (mrayburn@ihcda.in.gov).