Tennessee Housing Development Agency

Andrew Jackson Building Third Floor
502 Deaderick St., Nashville, TN 37243

MEMORANDUM

TO: All Interested Parties

FROM: Multifamily Programs Division

SUBJECT: **DRAFT** Guidance Regarding Implementation of Low-Income Housing Tax Credit Income Averaging Federal Election

DATE: April 15, 2019

The following document is **draft** guidance regarding implementation of the Low-Income Housing Tax Credit income averaging federal election. THDA reserves the right to modify this guidance in any respect, as determined by THDA, in its sole discretion, to be appropriate.

Information about meetings THDA will host on April 23 and April 30 regarding income averaging will be posted to the THDA web site at www.thda.org in the near future.

Comments regarding the **draft** guidance regarding implementation of the Low-Income Housing Tax Credit income averaging federal election, may be sent to TNAllocation@thda.org. ***Please submit comments no later than 9:00 AM CDT on April 22.***

TENNESSEE HOUSING DEVELOPMENT AGENCY

LOW-INCOME HOUSING TAX CREDIT
INCOME AVERAGING FEDERAL ELECTION

(DRAFT 04.15.19)

I. Income Averaging Federal Election. The Internal Revenue Service ("IRS") amended Section 42(g) of the Internal Revenue Code of 1986 to add a third federal minimum set-aside option an applicant for Low-Income Housing Credit ("LIHC") may elect for a proposed development to meet the definition of "qualified low-income housing development." A development may meet the requirements of section 42(g) if the applicant elects to satisfy the 20-50 test, the 40-60 test, or the new subsection specified as the Average Income test ("Income Averaging"). Income Averaging allows households with incomes of up to 80 percent of the Area Median Income ("AMI") to qualify for LIHC units, so long as the average of the imputed income limitations for a development, as a whole, does not exceed 60 percent of AMI.

II. Income Averaging Test.

1. Under Income Averaging, a development meets the requirements of section 42(g)(C) if 40 percent or more of the residential units in the development are:

    i. rent restricted; and

    ii. occupied by individuals whose income does not exceed the imputed income limitation designated by the applicant with respect to the respective unit.

2. The average of the imputed income limitations, across the development as a whole, cannot exceed 60 percent of the area median gross income.

3. An applicant for competitive or noncompetitive LIHC shall designate in the Initial Application submitted to THDA:

    i. the number of units, if any, at each imputed income limitation; and

    ii. the number of bedrooms in each unit.

4. The designated imputed income limitation of units to which Income Averaging applies shall be between 20 percent and 80 percent of AMI, in 10 percent increments.

5. Failure to meet the minimum set-aside may result in ineligibility pursuant to the Low-Income Housing Credit Qualified Allocation Plan ("QAP").

III. Tennessee Housing Development Agency ("THDA") Requirements.

1. Only developments that contain 100 percent LIHC units are eligible for Income Averaging. Each building must be designated as part of a "multiple building project" on Line 8B of the IRS Form 8609.

2. The election of Income Averaging must be made at the time of Initial Application and is irrevocable as of the date the Initial Application is submitted to THDA.

3. An applicant must provide an acknowledgement from the Syndicator and the Lender, that they are aware that the applicant is irrevocably electing Income Averaging. Such acknowledgment must be in a manner satisfactory to THDA in its sole discretion.

4. The designation of imputed income limitations must be a fixed mix of units by income limits and bedroom size, but may float within the building or development.

    i. In designating units at each imputed income limitation, Owner must assure reasonable parity between the number of bedrooms at imputed income limitations above 60 percent and the number of bedrooms at imputed income limitations below 60 percent.

    ii. In distributing units at each imputed income limitation among buildings, there may not be a concentration of units at the same imputed income limitation. For example, units at the same imputed income limitation may not be concentrated on the same floor or in the same building.

    iii. THDA will review the Initial Application to determine whether the requirements of this Section 4 are satisfied. If, upon review, it is determined that the requirements of this section are not met, THDA will notify the applicant as described in Section 15.A. of the QAP.

5. The recorded Land Use Restrictive Covenant ("LURC") will contain the designation of units at each income level by unit size as reflected in the Initial Application. THDA will monitor for compliance with these LURC requirements.

6. To be rent-restricted, the gross rent charged for a LIHC unit cannot exceed 30 percent of the imputed income limitation designated by the taxpayer.

    i. For example, if a unit is designated as a 40 percent unit, it must be occupied by a household who, at initial occupancy, has income equal to or less than 40 percent of AMI and who is continuously charged rent that is equal to or less than 30 percent of 40 percent of AMI.

7. In addition to all other requirements, a market study must be submitted that demonstrates, to THDA's satisfaction, the financial feasibility of the Income Averaging election and that a market exists for the number of units at the designated imputed income limitations. This market study is required at Initial Application, at Final Application, and at any time a request is made to modify the number of units designated at each imputed income limitations.

8. THDA, in its sole discretion, will determine if all requirements are being met, including financial feasibility, during any underwriting evaluation process.

9. There will be a per unit compliance fee for choosing Income Averaging, payable as provided in the relevant Qualified Allocation Plan.

10. As part of the Certified Property Management Process, THDA will provide additional mandatory training for property managers and ownership entities electing Income Averaging.

11. Owners shall make any revisions to LIHC documents and comply with all other requirements as THDA deems necessary in the implementation of Income Averaging.

12. THDA will perform annual compliance review of tenant data, unit mix, and bedroom parity.

IV. <u>Compliance Monitoring.</u>

1. The Initial Application must specify the number of units at each imputed income limitations and the number of bedrooms in each specified unit for the development as a whole.
2. Each unit must be occupied by an income qualified household, taking into account the designated imputed income limitation for that unit.
3. The average imputed income limitation calculation will only be applied to the development as a whole, not individual buildings.
4. Each building must have an applicable fraction of 100 percent at all times.
5. Owner shall satisfy the designation requirements as specified under section III.4.i above.
6. With regard to units designated at the 50 percent or the 60 percent imputed income limitations, Owners must give preference to voucher holders.