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income averaging

frequently asked questions 09.24.18

1. What is income averaging (IA)?

The Consolidated Appropriations Act of 2018 (the Act) was signed into law on March 23, 2018 that permanently established Income Averaging (IA) as a third minimum set-aside election to the IRC Section 42. IA is intended to serve households earning as much as 80 percent of Area Median Income (AMI), provided the average income/rent limit in the property is 60 percent or less of AMI. Development that select IA must commit to having at least 40 percent of the units in the property affordable to eligible households. IA benefits include offering deeper levels of affordability and serving a broader range of low and moderate-income households.

Owners must select rent and income levels in 10 percent increments beginning at 20 percent of AMI. The allowable income/rent designation levels are 20 percent of AMI, 30 percent of AMI, 40 percent of AMI, 50 percent of AMI, 60 percent of AMI, 70 percent of AMI, and 80 percent of AMI.

2. What projects are eligible to utilize IA?

While IA became effective 3.23.18, CHFA plans to offer this new set-aside in Colorado starting January 1, 2019. Please refer to CHFA's IA Policy and 2019 QAP for further information regarding eligibility and qualification. The IA election may be requested for 9% federal LIHTC, 4% federal LIHTC, and 4% federal/state LIHTC applications for new construction or acquisition/rehabilitation projects.

3. Are existing projects that have not placed in service eligible for IA?

Only 4% non-competitive 100% affordable developments that previously received an allocation of LIHTC provided the project has not placed in service (IRS 8609 not executed) are permitted to elect IA prior to January 1, 2019 provided the development continues to qualify with the terms of the QAP. Refer to CHFA's IA Policy for additional guidance.

4. Can IA be used for developments that are paired with Colorado State Tax Credits?

Yes. State AHTC follows federal guidance and would be eligible to utilize IA.

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5. Can existing placed-in-service LIHTC projects utilize IA?

No. The minimum set-aside election once made on the IRS 8609 is irrevocable. Projects that have previously been placed in service are not eligible at this time to select IA. Refer to CHFA's IA policy for further clarification.

6. Will re-syndication of an existing LIHTC development be able to utilize IA?

Since the minimum set-aside election is irrevocable, re-syndication of an existing LIHTC development may be considered only after the owner has fulfilled its obligation under the original LURA.

7. How will multiple buildings be treated under the 8b election on the IRS 8609 form?

If the owner checks "yes" under 8b on the IRS 8609 Form, IA would apply across the entire project rather than building by building. It is critical for the owner and agent to be aware of this implication when treating multiple buildings as one development. Selecting "yes" on the 8b form is similar to selecting the minimum set-aside election which is irrevocable when the IRS 8609 is executed.

8. Can IA be paired with developments that utilize 4% LIHTC and exempt bonds?

IRC Section 142 that covers guidance for exempt facility bonds was not affected as part of approval of IA. Developments that intend to use IA can be paired with 4% LIHTC and tax-exempt bonds provided the property meets the set-aside restrictions for IA as well as the minimum set-aside restrictions for tax exempt bonds.

9. Does CHFA have any requirements for designating units and income levels for IA projects?

While IA provisions do not provide guidance on how owners may designate units and the accompanying income levels, please refer to CHFA's IA Policy and the QAP for further guidance.

10. Would failing to meet IA be reportable to the IRS as a noncompliance event?

Yes. If any part of the IA is violated, the building/project would not be eligible for any credits during the period of violation and would be reportable to the IRS on Form 8823.

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11. When is CHFA planning to establish its monitoring requirements for IA projects?

CHFA's Program Compliance team is currently reviewing IA requirements and plans to establish its preliminary guidance soon. Please check the IA resource page on CHFA's website for updates.

12. Where can I find more information about IA?

Additional information on IA can be found on the following websites:

Colorado Housing and Finance Authority (CHFA) <https://www.chfainfo.com/arh/lihtc/income-averaging>

National Council of State Housing and Finance Agencies (NCSHA) <https://www.ncsha.org/?s=income+averaging>

Novogradac and Company Affordable Housing Resource Center <https://www.novoco.com/notes-from-novogradac/implementation-lihtc-income-averaging>