

## **Income Averaging – Draft Policy Florida Housing Finance Corporation**

Thank you for your patience as Florida Housing reviews the new Average Income Test provided for in The Consolidated Appropriations Act of 2018, which permanently establishes Income Averaging as a third type of minimum set-aside election for new Housing Credit developments. While developments that have already received their 8609s are not eligible to change their set-aside commitments, it is FHFC's desire to allow developments that are currently under development (but have not received their 8609s) to elect this set-aside option. This letter serves as an outline to our proposed requirements and procedures in implementing this new set-aside option, both for new developments and those that are already under construction or have completed construction but have yet to receive their 8609s.

Income Averaging allows credit-qualified units to serve households earning as much as 80% of area median income (AMI), as long as the average income/rent limit in the development is 60% or less of AMI. Income Averaging, when elected, applies to ALL Housing Credit set-aside units. A development must commit to having at least 40% of the units in each building set-aside for low-income households. When a multiple-building project election is made, the commitment to having at least 40% of the units set-aside applies to the combined total of all units in the particular buildings for which each election is made.

### **Florida Housing Requirements of Income Averaging**

- Units provided additional funding through the National Housing Trust Fund (NHTF) program, which are required to be set aside for households at or below 22% AMI, may not be offset by units designated at an AMI that is greater than the AMI category applicable to NHTF.
- On 4% Housing Credit transactions, SAIL units must be Income Averaged along with the HC units.
- On 4% Housing Credit transactions that include SAIL ELI funding, Income Averaging may only be used when the SAIL ELI loan is repaid to Florida Housing within a short period to be determined by Florida Housing and the ELI set-aside requirement is applicable for the 50-year Extended Use Period.
- Regardless of the designated AMI category of the ELI County Chart, if Income Averaging is elected, all ELI units in a development will use the federal 30% AMI standard.
- The ELI set-aside for 9% Housing Credit Family and Elderly developments will be increased to a 15% set-aside. Out of this 15% set-aside, no more than two-thirds (2/3) of the ELI units (10% of the total units) may be included in the Income Averaging calculation, and the remaining one-third (1/3) of the ELI units (5% of total units) will be considered 60% AMI units for the purpose of the Income Averaging calculation.
  - We would like comments on how we should treat specialized developments such as the Homeless or Disabling Condition Demographic or developments located in the Keys.
- If a development is already either partially or fully leased up, Florida Housing is concerned that the current incomes/rent may not meet the new Income Averaging requirements. Therefore, the review for the new Income Averaging set-aside will require evaluation of compliance with income and rent requirements for all households at income limit levels at or below 50 AMI, at the Developer's expense. The evaluation review must take place prior to approval of the change in set-aside commitments. It should be noted that it may be logistically impossible for some developments to meet the Income Averaging requirements if they have already begun or completed lease up.

All developments must adhere to the income averaging requirements outlined below. Florida Housing will allow developments that have NOT received their 8609s to elect the Income Averaging option in place of the 40 at 60 and 20 at 50 designations. The approval of the change in set-aside designation will be subject to the following conditions:

- An updated Market Study will be ordered by the Underwriter and the Underwriter will provide an Update Letter to the original Credit Underwriting Report (at the Developer's expense). The Update Letter will reflect the new Income Averaging election and, at a minimum, will verify compliance with income/rent requirements of the existing households, summarize the findings of the updated Market Study and provide a new rental chart, Year 1 Pro Forma, and Underwriter recommendation. The election of Income Averaging will be contingent upon a positive recommendation from the Underwriter.
- The Applicant must comply with all ELI requirements of the new Income Averaging policy, which will be confirmed in the Update Letter to the underwriting report.
- The updated Market Study must be provided to the Syndicator and Permanent Lender, who in turn must each provide a letter to FHFC reflecting their respective acceptance of change. The Syndicator's letter should also detail the process they will undergo to review compliance with the new income/rent restrictions under the new Income Averaging set-aside election.
- The change in the set-aside election will require Board Approval.
- Once FHFC receives the updated Market Study, Update Letter to the Credit Underwriting Report and letters from the Syndicator and Lender, FHFC will proceed with an amendment to the existing Extended Use Agreement (if applicable). Upon execution by all parties, FHFC will send the Amended EUA to the appropriate county for recording. Upon receipt of the recorded Amendment and satisfaction of all other Housing Credit requirements, FHFC will release the 8609s.
- If the Link Memorandum of Understanding has been executed, it must be re-executed with the updated Link unit numbers if necessary.
- There will be additional fees associated with changing the income set-aside election for the update to the Market Study and CUR, which will be set forth at a later date.

#### **Other Considerations**

- For IRS Housing Credit purposes, Income Averaging will be applied to ALL buildings in a development that contain set-aside units.
- It should be noted that if Income Averaging is chosen and a property has ELI and/or NHTF units that Florida Housing has specified, these units will not be included in Income Averaging calculations. For purposes of the IRS, these units will be considered 60% AMI units. For Florida Housing purposes, these ELI units will not be included in the Income Averaging calculation, and may not be offset by units designated at an AMI that is greater than the AMI category applicable to ELI.
- Income Averaging will not be based on number of bedrooms in a unit and FHFC will allow for floating unit designations, unless future IRS guidance is released that conflicts with this policy.
- Income Averaging applies to both income and rent limits.
- A development that is undergoing resyndication should proceed with caution. The requirements of the original EUA will not cease and the Income Averaging election cannot conflict with existing EUA set-aside requirements. We will take developments into consideration on a case by case

basis, but it may be impossible to meet income/rent set-aside requirements of both EUAs during the first thirty years of the original EUA. The applicable fraction at the end of the first year of the original Credit Period must be maintained throughout the term of the original EUA.

- Income Averaging does not apply to tax exempt bond-financed developments. Therefore, set-aside requirements for bond-financed developments must be met within the units designated at or below 60% AMI.
- Each building or each designated multiple building project within a HC development, as applicable, must individually meet Income Averaging requirements.
- Compliance Monitoring Fees will be higher for Income Averaging transactions versus the traditional 20 at 50 or 40 at 60 set-aside commitments due to the additional complexity and work required in monitoring.