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To: Real Estate Department Partners  
From: Real Estate Department  
Date: April 27, 2018  
Re: **Income Averaging Policy for 4%/ Tax-Exempt Bond Developments**

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**Notice: RED-18-20**

*Note: This RED Notice specifically addresses the applicability of income averaging for 4% LIHTC/ tax-exempt bond developments. IHCD will issue a future RED Notice about applicability of the income averaging rules for 9% LIHTC developments, as well as 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 4%/ Tax-Exempt Bond Developments**

Section 142 (the tax-exempt bond regulations) was not amended to include income averaging provisions. Therefore, for eligibility for tax exempt bonds under Section 142, a project must still meet a 20/50 or 40/60 minimum set-aside. However, for purposes of the 4% credit allocation, the project can elect to do income averaging. Therefore, a 4%/bond development can elect an income averaging minimum set-aside for purposes of tax credit compliance, as long as the unit mix selected would also meet either a 20/50 or 40/60 minimum set-aside test for purposes of bond compliance.



IHCDA will allow any 4%/bond development that has already received an allocation but that has not yet submitted a final application to request a modification in order to follow the income averaging rules. A development that has already started lease-up can potentially request a modification, but logistically this may be difficult since the property would not have created a tenant selection plan and leased up following income and rent restrictions that would meet the income averaging requirements. An owner considering submitting a request for a development that has started lease-up should contact IHCDA to discuss.

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.

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](mailto: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 set-aside 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. IHCDA will not rescore applications and will allow 4%/bond developments to alter their initial scoring related to rent restrictions. All other scoring commitments must remain the same.

### **Questions**

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