

## Income Averaging Roundtable - May 25, 2018

PLEASE NOTE THAT AS OF THIS DATE THE INTERNAL REVENUE SERVICE HAS NOT ISSUED FULL AND DEFINITIVE GUIDANCE AS TO HOW IT WILL ADMINISTER OR MONITOR DEVELOPMENTS THAT MAKE AN INCOME AVERAGING ELECTION. ANY DEVELOPMENT THAT CONSIDERS SUCH AN ELECTION SHOULD DO SO IN CONSULTATION WITH ITS COUNSEL AND/OR TAX ADVISORS. TDHCA IS NOT ESPOUSING OR RECOMMENDING ANY SPECIFIC APPROACH TO THIS MATTER.

**This is a staff draft of potential ways that Income Averaging could be incorporated into TDHCA rules and policies. It is provided to spur discussion at the Roundtable, and should not be relied on when making decisions regarding the Income Averaging election.**

### Amendment Guidelines

A Development that has already received a tax credit award but has not yet made its minimum set-aside election may make an income averaging election if it involves no changes to representations made to secure the award. A Development making such an election must provide the Department detailed information on the nature of its income averaging election to enable the Department to monitor the Development.

If the income averaging election would require amending any of the representations made in the Application to secure the award, Board approval of a material amendment will be required under TEX. GOV'T CODE §2306.6712. In addition to addressing the requirements set out in that section, a development requesting any such amendment must provide:

- A detailed description of their rent limits and how they will apply to their unit types;
- A current market analysis addressing how the proposed income distribution will align with market areas demographics and impact capture rates;
- Confirmation from each financing source (syndicator and all lenders and investors, if any, outside of the tax credit syndication) that they have reviewed the proposed changes and find them acceptable and financially feasible with no change in their terms (or, if there are changes, a detailed description of the proposed new terms) and that they are prepared to close without need of any extensions (or, if extensions will be needed, what will they be?).
- A graphic configuration of units and rent and income limits for each showing that there will be a distribution that will comply with fair housing laws.

## **Compliance Guidelines**

Unless other guidance is received from the Internal Revenue Service or Treasury Department the Department will monitor developments that elect income averaging in the following way:

Designations can float. By way of example and not limitation, if at Application the owner committed to a mix of 30%, 60% and 80% units with an overall low income percentage of 55%, throughout the affordability period, as long as the overall low income percentage remains at or below 55%, the unit designations can change to any combination of 20%, 30%, 40%, 50%, 60%, 70% or 80%.

100% low income projects that select income averaging are neither required nor prohibited from completing annual income recertifications. If a 100% low income development chooses to perform annual income recertifications household rent can be adjusted (in accordance with all applicable lease terms) provided that the project still has an average income equal to or less than the percentage represented at the time of Application.

Mixed income projects that select income averaging are required to complete annual income recertifications. If the AMI tier of a household changes, Owners can adjust the household's rent to their new designation (higher or lower) as long as the project still has an average income of equal to or less than the percentage represented at the time of Application. If the household income increases, and re-designating the rent to the new AMI tier would cause the project average to exceed the required AMI average, the owner will remain in compliance if the rent is restricted to the limit that maintains the required AMI average.

The Department may expand the percentage of files reviewed for a project that selects income averaging if noncompliance is identified in the initial 20% sample. If noncompliance is identified Department staff will attempt to determine the correct designation for the household. If the project still meets the required income average, the mis-designation will not be noted as noncompliance.

The Department will report a project as failing to meet the minimum set aside test if less than 40% of the units meet the owner's intended designation.

Owners must disperse 20%, 30%, 40%, 50%, 60%, 70% and 80% units across unit types in a manner that does not violate fair housing laws.

## **Scoring for the QAP and other MF Rules**

As we develop the 2019 QAP we are also seeking input on how we ought to address income averaging elections. Until there is more detailed guidance from the IRS we are hesitant to provide incentives to make this election and we believe that at least in the first year it ought to track closely the overall results that the two historic set-aside elections have produced and continue to have incentives for a reasonable level of low income units regardless of election. We do not want to provide uninformed incentives for aggressive election structures that might place a development at risk in an effort to secure points.

A new subparagraph that provides points for committing to a (to be determined) average income less than 60% AMFI will be added to 10 TAC 11.9(c)(1). This new scoring item will become 10 TAC 11.9(c)(1)(C) for the same non-Rural metros currently identified in 10 TAC 11.9(c)(1)(A). A corresponding scoring item for the areas not specified in 10 TAC 11.9(c)(1)(C) that wish to elect the income averaging set-aside will be made available in 10 TAC 11.9(c)(1)(D).

### **§11.9.Competitive HTC Selection Criteria.**

#### **(c) Criteria to serve and support Texans most in need.**

(1) Income Levels of Tenants. (§§2306.111(g)(3)(B) and (E); 2306.6710(b)(1)(C) and (e); and §42(m)(1)(B)(ii)(I)) An Application may qualify for up to sixteen (16) points for rent and income restricting a Development for the entire Affordability Period at the levels identified in subparagraph (A) or (B) of this paragraph.

(A) For any Development located within a non-Rural Area of the Dallas, Fort Worth, Houston, San Antonio, or Austin MSAs:

- (i) At least 40 percent of all Low-Income Units at 50 percent or less of AMGI (16 points);
- (ii) At least 30 percent of all Low-Income Units at 50 percent or less of AMGI (14 points); or
- (iii) At least 20 percent of all Low-Income Units at 50 percent or less of AMGI (12 points).

(B) For Developments proposed to be located in areas other than those listed in subparagraph (A) of this paragraph:

- (i) At least 20 percent of all Low-Income Units at 50 percent or less of AMGI (16 points);
- (ii) At least 15 percent of all Low-Income Units at 50 percent or less of AMGI (14 points); or
- (iii) At least 10 percent of all Low-Income Units at 50 percent or less of AMGI (12 points).

(C) For any Development located within a non-Rural Area of the Dallas, Fort Worth, Houston, San Antonio, or Austin MSAs that propose to use the Average Income Test under §42(g)(1)(C):

- (i) The Average Income for the proposed Development will be XX% (16 points)
- (ii) The Average Income for the proposed Development will be XX% (14 points)
- (iii) The Average Income for the proposed Development will be XX% (12 points)

(D) For Developments proposed to use the Average Income Test under §42(g)(1)(C) that are located in the areas other than those listed in subparagraph (C) of this paragraph:

- (i) The Average Income for the proposed Development will be XX% (16 points)
- (ii) The Average Income for the proposed Development will be XX% (14 points)
- (iii) The Average Income for the proposed Development will be XX% (12 points)

Staff will be assessing other Multifamily Rules that may need to be changed to accommodate income averaging, including but not limited to:

Multifamily Housing Revenue Bond Rules

§12.6. Pre-Application Scoring Criteria.

§12.9. Occupancy Requirements.

2018 Multifamily Direct Loan Rule

§13.4. Set-asides, Regional Allocation, and Priorities.

§13.6. Scoring Criteria