

Income Averaging Policy

The Consolidated Appropriations Act of 2018 (the Act) established income averaging as a third minimum set-aside election for low income housing tax credit developments. It allows qualified units to serve households with income as high as 80% of the Area Median Income (AMI) as long as the average income of these qualified units equals 60% or less of AMI. VHFA will consider proposals for utilizing income averaging with applications submitted during the 2020 tax credit round and following.

A. Federal statutory requirements:

1. Under Internal Revenue Code (IRC) Section 42(g)(1)(C)(ii)(I) owners designate the income and rent limitation of each unit. The designated income limits must average 60% of AMI; owners do not need to maintain an average among tenant household incomes.
2. There are seven designated income levels: 20%, 30%, 40%, 50%, 60%, 70%, and/or 80% of AMI.
3. The election is irrevocable, and must be maintained for the duration of the 15 year compliance period and the subsequent extended use period.
4. Under IRC § 42(g)(1)(C)(i) a property is qualified when 40% or more of the total units:
 - are rent restricted to and
 - occupied by households at or below the limitation designated with respect to the unit.
5. IRC § 42(g)(2)(D)(iii) contains a distinct Next Available Unit Rule (NAUR) for income averaging. Owners should consult with compliance experts.
6. The 30% AMI level under the Housing Credit is not the same as the Extremely Low-Income (ELI) restriction under the National Housing Trust Fund. Owners of properties with both sources should be mindful of the difference.

Please note: VHFA is providing these highlights of the statutory requirements as of the date of the issuance of this guidance. We recommend consulting with compliance experts, or your own legal and accounting advisors prior to engaging in income averaging.

B. VHFA adopted requirements and interpretations:

1. Developments awarded allocations of federal 9% credit in 2020 and beyond.
2. Resyndication of properties with a recorded Housing Credit Housing Subsidy Covenant are not eligible.
3. Applicants will designate the number of units at a specific AMI by unit type (e.g., including size of unit and AMI designation) at the time of application and confirm prior to finalizing the Housing Credit Housing Subsidy Covenant. Projects may float the units within the same project (as long as there is unit parity), but the number of units within each AMI designation must remain the same.
4. Income limits must be equally distributed among bedroom sizes. VHFA will consider exceptions to this requirement when necessary to:
 - reduce relocation impact in occupied rehab properties,
 - comply with the requirements of federal project-based assistance, and
 - facilitate supportive housing.

5. The irrevocable election is made at the time of application to VHFA for Housing Credits.
6. VHFA approval is required prior to changing unit income designations in a property that has elected Income Averaging.
7. The recorded Housing Credit Subsidy Covenant will contain a general provision regarding the election and include a schedule with the unit AMI designations.
8. Owners of developments with more than one building will indicate on the Form(s) 8609 to treat all of them as part of a multiple building project (checking "Yes" on line 8b).
9. VHFA will monitor property for compliance at least every three years with desk audits annually.
10. Absent Internal Revenue Service guidance to the contrary, VHFA will not report a property as failing the income averaging minimum set-aside so long as 40% of the total units comply with the stated designations for each.
11. Leasing to an over-income household or exceeding the maximum housing expense does not increase a unit's AMI designation.
12. The Next Available Unit Rule operates the same as with the original 20/50 and 40/60 set-aside elections in a 100% tax credit qualified development. However if
 - a property had market rate units, one or more of which become vacant, and
 - multiple households in tax credit units are over the applicable 140% limit, the owner must rent the next available unit according to the lowest designation percentage among the units with over-income households
13. Tenant Income Certifications will be required for all developments (including 100% Tax Credit developments) during the compliance period. Recertification Waivers will not be acceptable.
14. VHFA reserves the right to charge an increase tax credit compliance monitoring fee for development that elect to use income averaging.

C. Requests to elect set-aside must include the following:

1. A VHFA Application reflecting all income designations.
2. A spreadsheet showing the AMI percentage(s) for designated set-aside unit types and sizes.
3. A legal opinion stating income averaging will be compatible with the requirements of all other anticipated funding sources and project-based operating assistance (if applicable).
4. A statement from permanent lenders and the equity provider acknowledging income averaging will be used and must be maintained for the 15 year compliance period and subsequent extended use period.
5. A market study showing adequate demand for all possible combinations of unit sizes and percent limits.
6. Statement committing to annual income averaging training for on-site property managers.

D. 9% Credit Applications

Income averaging is available at the time of the 2020 competitive round and following.

E. 4% Tax Exempt Bonds/4% Credit Applications

The Act did not change IRC Section 142, which includes multifamily Housing Bonds. However, these properties may satisfy both income averaging and one of the elections applicable to tax-exempt financing (20% at 50% or 40% at 60%). Units with incomes above 60% or 50%, as applicable, do not count for purposes of bond compliance.

This policy is subject to change at the discretion of the Vermont Housing Finance Agency. Compliance with Section 42 of the IRS and any policy, including future updates, implemented by the Vermont Housing Finance Agency is the responsibility of the owner of a property.

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