



What Do Advocates Need to Know About the New Income Averaging Rules for LIHTC Properties?

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Goals

Update advocates on the change in the tax code that now allows income averaging.

Discuss significant areas in which guidance is lacking

Address issues ripe for state-based advocacy

Goals

State Housing Finance agencies will be making significant policy decisions

Housing advocates need to be engaged in the state process.

Other Resources

National Council of State Housing Agencies (NCSHA) – Webinar and Frequently Asked Questions - <https://www.ncsha.org/resource/housing-credit-income-averaging-frequently-asked-questions/>

NCSHA Letter to IRS and Treasury - <https://www.ncsha.org/resource/ncsha-income-averaging-letter-to-irs-and-treasury/>

Other Resources

Novogradac & Company LLP has provided interesting material on income averaging

<https://www.novoco.com/periodicals/articles/income-averaging-option-creates-more-opportunities-affordable-housing>

Update from the states - <https://www.novoco.com/notes-from-novogradac/lihtc-allocating-agencies-initial-implementation-income-averaging>

What is Income Averaging

The Consolidated Appropriations Act of 2018 created a new minimum set aside election for new Low Income Housing Tax Credit (“LIHTC”) projects.

Income Averaging allows LIHTC owners to elect to serve households with incomes of up to 80% of area median income (AMI) and have these household qualify as LIHTC units, so long as the average income/rent limit in the project remains at 60% or less of AMI.

Owners who elect Income Averaging must also commit to at least 40% of the units in the project have an average income level of no more than 60% of AMI and the rents for these units must be equal to 30% of the qualifying income level.

Income Averaging Set Aside Rule

To meet the Basic Income Averaging Set Aside Rule:

- At least 40% of the units have to be both rent restricted and occupied by individuals whose incomes do not exceed the designated income limits.
- The average of the designated imputed income limits cannot exceed 60% of AMI.
 - Note: There is no definition of “designated” in the tax code!
- Determination of whether this set aside is met is made on a unit-by unit basis with income designations made in 10% increments (20%, 30% etc.) ranging from 20% to 80%.
- A unit must be leased to a household whose income is equal to or less than the designated income limitation.
- The rent for the unit must not exceed 30% of the designated income limitation.

Objectives of Income Averaging

Enables owners to offset lower rents, for extremely low and very low-income households, by charging higher rents to households above 60% of AMI range therefore providing developments the ability to maintain financial feasibility while providing a deeper level of affordability than may be otherwise possible.

Align LIHTC income limitations to be consistent with long-standing federal affordable housing policies that define “Low- Income” as households with incomes at or below 80% of AMI.

For existing HUD buildings refinanced with LIHTC, permit over income residents to remain thus prevent displacement.

Income Averaging and Existing LIHTC Housing Developments

Existing Housing Credit developments already placed in service and that have made a set aside election on federal Form 8609 **are not eligible** to change their minimum set-aside election to income averaging unless explicit guidance from the IRS states that this is permissible .

Income averaging is available, at the discretion of each allocating agency, to new developments making their minimum set-aside election after March 23, 2018.

The IRS is not required to provide guidance to the state allocating agencies before they may permit income averaging.

To date the IRS has not provided any guidance on income averaging.

Advocacy Issues for Income Averaging

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Opportunities & Relationship Building

Provides an opportunity to interact with allocating agencies without client representation or litigation.

Most allocating agencies have board appointed by the Governor or State Legislature.

- Connect with your board or those who appoint the board when possible.

Income averaging is a significant change in LIHTC operations and can present a new way to get involved.

Assume that developers, lenders, investors, and others are getting involved. Someone should advocate on behalf of tenants.

Important Note: Existing Guidelines

Your state may have already issued guidance on income averaging:

- California, Georgia, Indiana, Maryland, Michigan, Minnesota, Ohio, Pennsylvania, South Dakota, Texas, Washington and West Virginia.

If not, your state may be waiting for more information from the IRS.

Income Averaging and The IRS

Do not expect the IRS to issue guidance regarding income averaging anytime soon.

If you determine that income averaging will be detrimental to your clients:

- Advocate that your state housing finance agency does not issue further guidance until the IRS does so.
- Allocating agencies waiting for the IRS will likely continue using the “status quo” for the foreseeable future.

Income Averaging and Vouchers


Vouchers play a significant role in the sustainability of LIHTC housing.

- 40% of LIHTC units nationally utilize rental assistance.
- 70% of Extremely Low Income (ELI) tenants utilize vouchers.

LIHTC property managers cannot discriminate against a tenant for using a voucher, unless the rent charged exceeds the voucher rent.

- Has traditionally not posed an issue with averaging AMI percentages.

If units are designated at 70% or 80% of area median income (AMI), LIHTC rents may begin to exceed voucher rents.

- Provides a loophole so that owners can reject voucher holders.
 - Will have a significant impact on the availability of housing for ELI renters.
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Income Averaging and Vouchers

When allocating agencies underwrite tax credit deals they should assume the acceptance of voucher holders in units designated at 70% and 80% of AMI.

- This will enable LIHTC property managers to take a renter using a voucher in all units.

While this may limit the value of income averaging in some cases, voucher acceptance is vital for housing the most vulnerable tenants.

Income Averaging and Designation

How do you know which LIHTC income “designation” is for your tenant’s unit, or what rent your tenant should pay?

- Lease addendum
- Allocating agency could require property managers to indicate designation on tenant lease.

Definition of “designation” remains unclear.

Allocating agency can ensure units are available to voucher holders by creating a ceiling for AMI below 60%.

Income Averaging Across Units

% of AMI	Number of Units Per Development	Number of Units Per Development
80%	2*	3*
70%	1*	4*
60%	1	2
50%	1	2
40%	1	0
30%	2	1
20%	2	1
Average AMI for Development	48% Accepted	61% Not Accepted

*These units may not be available for voucher holders due to maximum rent without allocating agency intervention.

Income Averaging and Unit Size

No guidance regarding which AMI levels must apply to size of unit.

- Example: You can have three-bedroom units designated at 30% AMI and one-bedroom units designated at 50% AMI in the same development.

What size units are in greatest shortage in your area— this is a potential point for advocacy.

Income Averaging and Foreclosure

Mixed-Income LIHTC properties experience foreclosure 10 times more often than non mixed-income properties.

As such, income averaging could cause higher rates of foreclosure.

When LIHTC properties foreclose, affordability restrictions are removed.

Allocating agencies need to implement additional protections to prevent foreclosures that could reduce the availability of affordable housing.

Key Points

Determine if your state allocating agency has issued guidance.

Connect with the allocating agency board and staff.

If you believe income averaging to be detrimental to your clients, advocate that your state's agency "wait" for guidance from the IRS.

Encourage your agency to underwrite units to accept vouchers.

Encourage your agency to create protections against foreclosure to preserve affordable units.

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