



Tennessee Housing Development Agency

Andrew Jackson Building Third Floor
502 Deaderick St., Nashville, TN 37243

Bill Lee
Governor

Ralph M. Perrey
Executive Director

MEMORANDUM

TO: All Interested Parties

FROM: Multifamily Programs Division

SUBJECT: Guidance Regarding Implementation of Low-Income Housing Tax Credit Income Averaging Federal Election

DATE: May 22, 2019

The following document is guidance regarding implementation of the Low-Income Housing Tax Credit income averaging federal election.

THDA reserves the right to modify this guidance in any respect, as determined by THDA, in its sole discretion, to be appropriate.

TENNESSEE HOUSING DEVELOPMENT AGENCY

LOW-INCOME HOUSING CREDIT INCOME AVERAGING FEDERAL ELECTION

- I. Income Averaging Federal Election. The Internal Revenue Service (“IRS”) amended Section 42(g) of the Internal Revenue Code of 1986 to add a third federal minimum set-aside option an applicant (“Owner”) for Low-Income Housing Credit (“LIHC”) may elect for a proposed project to meet the definition of “qualified low-income housing project” (“development”). Owner may elect to satisfy the 20-50 test, the 40-60 test, or the new subsection specified as the Average Income test (“Income Averaging”). Income Averaging allows households with incomes of up to 80 percent of the Area Median Income (“AMI”) to qualify for LIHC units, so long as the average of the imputed income limitations for a development, as a whole, does not exceed 60 percent of AMI.

- II. Income Averaging Test.
 1. Under Income Averaging, a development meets the requirements of section 42(g)(1)(C) if 40 percent or more of the residential units in the development are:
 - i. rent restricted; and
 - ii. occupied by individuals whose income does not exceed the imputed income limitation designated by the applicant with respect to the respective unit.
 2. The average of the imputed income limitations, across the development as a whole, cannot exceed 60 percent of the area median gross income.
 3. The Initial Application submitted to THDA for competitive or noncompetitive LIHC shall designate:
 - i. the number of units, if any, at each imputed income limitation; and
 - ii. the number of bedrooms in each unit.
 4. The designated imputed income limitation of units to which Income Averaging applies shall be between 20 percent and 80 percent of AMI, in 10 percent increments.
 5. Failure to meet the minimum set-aside may result in ineligibility pursuant to the Low-Income Housing Credit Qualified Allocation Plan (“QAP”).

- III. Tennessee Housing Development Agency (“THDA”) Requirements.
 1. Only developments that contain 100 percent LIHC units are eligible for Income Averaging. Each building must be designated as part of a “multiple building project” on Line 8b of the IRS Form 8609.
 2. The election of Income Averaging must be made at the time of Initial Application and is irrevocable as of the date the Initial Application is submitted to THDA.
 3. Owner must provide an acknowledgement from the Syndicator and the Lender, that they are aware that Owner is irrevocably electing Income Averaging. Such acknowledgment must be in a manner satisfactory to THDA in its sole discretion.

4. The designation of imputed income limitations must be a fixed mix of units by income limits and bedroom size, but may float within the building or development.
 - i. In designating units at each imputed income limitation, Owner must assure reasonable parity between the number of bedrooms at imputed income limitations above 60 percent and the number of bedrooms at imputed income limitations below 60 percent.
 - ii. In distributing units at each imputed income limitation among buildings, there may not be a concentration of units at the same imputed income limitation. For example, units at the same imputed income limitation may not be concentrated on the same floor or in the same building.
 - iii. THDA will review the Initial Application to determine whether the requirements of this Section III.4. are satisfied. If, upon review, it is determined that the requirements of this section are not met, THDA will notify Owner as described in Section 15.A. of the QAP.
 - iv. Owner may later request to modify the designation of imputed income limitations.
 - 1). Such request must be approved by THDA, in its sole discretion.
 - 2). If Owner requests to modify the designation of imputed income limitations, the imputed income limitation on any particular unit may be decreased or increased, but can never exceed its original designation.
5. The recorded Land Use Restrictive Covenant (“LURC”) will contain the designation of units at each income level by unit size as reflected in the Initial Application.
 - i. If any modification of the designation of the imputed income limitations is subsequently approved by THDA, the LURC will be amended.
 - ii. THDA will monitor for compliance with the LURC.
6. To be rent-restricted, the gross rent charged for a LIHC unit cannot exceed 30 percent of the imputed income limitation designated by the taxpayer.
 - i. For example, if a unit is designated as a 40 percent unit, it must be occupied by a household who, at initial occupancy, has income equal to or less than 40 percent of AMI and who is continuously charged rent that is equal to or less than 30 percent of 40 percent of AMI.
7. In addition to all other requirements, a market study must be submitted that demonstrates, to THDA’s satisfaction, the financial feasibility of the Income Averaging election and that a market exists for the number of units at the designated imputed income limitations. This market study is required at Initial Application, at Final Application, and at any time a request is made to modify the number of units designated at each imputed income limitation.

8. THDA, in its sole discretion, will determine if all requirements are being met, including financial feasibility, during any underwriting evaluation process.
9. There will be a per unit compliance fee for choosing Income Averaging, payable as provided in the relevant Qualified Allocation Plan.
10. As part of the Certified Property Management Process, mandatory training for property managers and ownership entities electing Income Averaging will be required.
11. Owners shall make any revisions to LIHC documents and comply with all other requirements as THDA deems necessary in the implementation of Income Averaging.
12. THDA will perform compliance review of tenant data, unit mix, and bedroom parity.

IV. Compliance Monitoring.

1. Each unit must be occupied by an income qualified household, taking into account the designated imputed income limitation for that unit.
2. The average imputed income limitation calculation will only be applied to the development as a whole, not individual buildings.
3. Each building must have an applicable fraction of 100 percent at all times.
4. Owner shall satisfy the designation requirements as specified under Section III.4. above and the LURC.
5. With regard to units designated at the 50 percent or the 60 percent imputed income limitations, Owners must give a preference to tenant-based voucher holders.
6. Owners must comply with the legal requirement of Affirmatively Furthering Fair Housing under the Fair Housing Act, the Americans with Disabilities Act, and all other legal requirements that pertain to its management policies. Owners must maintain records of denied applicants. THDA will review a sample of the denied applications to assure compliance is being maintained. THDA encourages Owners to work with their attorneys in setting landlord-tenant policies to avoid fair housing, disability, and any other violations of landlord-tenant law.