

Pennsylvania Housing Finance Agency 2019-2020 LIHTC Allocation Plan Income Averaging Policy

The recently enacted federal "Consolidated Appropriations Act of 2018" establishes the possibility of "income averaging" for **new** Housing Credit developments. Under the new criteria, if state credit agencies allow, owners may choose one of three (3) set-aside elections when making their minimum set-aside election. Instead of the "40 at 60" and "20 at 50" standards, the new federal law provides (subject to state concurrence) that units can serve households earning as much as 80% of Area Median Income (AMI), so long as the average income/rent limit in the property is 60% or less of AMI. Owners electing income averaging must have at least 40% of the units in the property affordable to eligible households and must specifically identify and define the income and rent tiers (which will be irrevocable once selected and included in their compliance monitoring program for the extended compliance period).

To date, the Service has not yet provided guidance to the industry about how income averaging will work with all existing program rules.

In June 2018, the Agency issued Interim Guidance which specifically stated that developments that have already been "placed in service" or that have previously elected a minimum set-aside are **not eligible** for income averaging ("IA"). Furthermore, it provided that **all projects currently in the pipeline (including those holding a preliminary determination of eligibility) have been ranked and selected for processing based on the project characteristics and selection criteria will not be considered.** The Agency will **not** accept a modification request for these developments to permit use of IA. Underwriting and funding assumptions have already been performed using original projections and market studies have been reviewed based on original unit and income projections.

The Agency is permitting use of IA prospectively for new tax credit applications. The 2019-2020 Allocation Plan for Low Income Housing Tax Credits permits the utilization of IA provided that one hundred percent (100%) of the units are be affordable to persons at or below 80% AMI or less as long as the average development income and rent limit is 60% AMI. Developments may not contain unrestricted or market rate residential units (manager units are excluded). In order to include IA in a development, applications must:

- Contain no more than four (4) income targets;
- Have no more than ten percent (10%) of the units in excess of 60% AMI (while still maintaining an overall less than 60% development AMI);
- Specify the income targets in 10% increments (ie, at or below 20% AMI, 30% AMI, 40% AMI, 50% AMI, 60% AMI, 70% AMI, and 80% AMI).
- **For Developments utilizing Income Averaging, the targeted rent must match the targeted income level.**
- Reasonably distribute units of similar size and income targeting throughout the property regardless of assigned income restrictions;
- Provide a market study evidencing demand for each proposed targeted incomes;
- Demonstrate management agent capacity/experience to implement IA;
- Not change income targets after application (development may elect 20/50 or 40/60 set aside post award);

- Make the 8b election on the IRS Form 8609 form indicating that it will be treated as a multiple building project (for multiple building proposals).
- Preservation applications may not utilize income targeting for units subject to an existing Indenture of Restrictive Covenants;
- Provide equity and financing commitment letters specifically confirming approval of Income Averaging; and
- Not reject tenancy from a person holding a Section 8 voucher regardless of income target.

If the development elects IA, **an additional compliance monitoring fee of \$500 will be assessed for all units in the property.** All IA developments must execute an Income Averaging Policy Acknowledgement (attached). Additionally, owner must submit Annual Owner Certifications and/or any other periodic compliance requirement that may be required as this policy is further developed (and IRS or Treasury guidance evolves). All tenants in IA developments must submit annual income certifications.

**Pennsylvania Housing Finance Agency
Income Averaging Policy Acknowledgement**

Project Name: _____

Project Number: _____

The undersigned intends to elect the average income test described in 26 U.S.C. §42(g)(1)(C) at issuance of the IRS Form 8609 for the above captioned housing development. Once elected by the Owner, it is deemed irrevocable and can only be amended with the consent of the IRS.

The undersigned agrees to adhere to the Income Averaging Policy attached as Exhibit A and specifically incorporated herein. The undersigned will unconditionally comply with all policies, rules, regulations, and guidelines, existing and as may be amended or published, of the Pennsylvania Housing Finance Agency as they relate to the average income test.

The undersigned acknowledges that the Internal Revenue Services may issue rules, requirements, interpretations, decisions, or other guidance that, as a matter of law, modify or invalidate the requirements contained in Exhibit A.

The undersigned agrees that the Pennsylvania Housing Finance Agency will at all times be indemnified and held harmless against all losses, costs, damages, expenses, and liabilities whatsoever nature or kind (including, but not limited to attorney's fees, litigation, and court costs, amounts paid in settlement, and amounts paid to discharge judgment, and any loss from judgment from the Internal Revenue Service) directly or indirectly resulting from, arising out of, or related to the requirements contained in Exhibit A and any other statements made regarding the average income test.

Acknowledged and Accepted by all APPLICANT(S)/OWNER(S)

Signed: _____

Date: _____

Print: _____

Signed: _____

Date: _____

Print: _____