



LIHTC – Income Averaging Option

Presented by Robin Thorne

LIHTC Program:

Low Income Housing Tax Credit (LIHTC) program was created by Congress in 1986 as part of the Tax Reform Act

- LIHTC regulations are codified in Section 42 of the Internal Revenue Code
- LIHTC regulations dictate that the highest income limit that a household can qualify under is 60%.
- Congress added income averaging as an option to the LIHTC program on March 23, 2018.

LIHTC Program:

Income averaging allows LIHTC developers to choose to serve households with incomes up to 80% of the Area Median Income (AMI), as long as at least 40% of the units are both rent-restricted and occupied by households with incomes that do not exceed the “designated income limits,” which may range from 20% of AMI in 10% increments up to 80% AMI.

The rent for a unit must not exceed 30% of the designated income limit, for example, 30% of 20% AMI, 30% of 30% AMI, etc.

LIHTC Program:

The Consolidated Appropriations Act of 2018 (the Act) permanently establishes income averaging as a third minimum set-aside election for new Housing Credit developments which owners could choose in lieu of the two existing minimum set-aside elections (the 40 at 60 and 20 at 50 standards).

The 80 percent of AMI standard is consistent with long-standing federal affordable housing policies, which define “low income” as households earning no more than 80 percent of AMI.

LIHTC Program:

The 80% AMI limit also conforms with NAHASDA income limits.

This will allow LIHTC developments to serve a greater range of household incomes.

Under the income averaging option, the higher rents that households with incomes in the above 60 percent of AMI range could pay would have the potential to offset the lower rents for extremely low- and very low-income households living in units designated at lower income.

LIHTC Program:

Income averaging applies to the designated income/rent levels of the units, not the incomes of individual tenant households.

Under income averaging, designated income/rent levels may only be set at 10 percent increments beginning at 20 percent of AMI.

The allowable income/rent designation levels are 20 percent of AMI, 30 percent of AMI, 40 percent of AMI, 50 percent of AMI, 60 percent of AMI, 70 percent of AMI, and 80 percent of AMI.

LIHTC Program:

State Housing Agencies are not required to include income averaging as an option for their LIHTC programs.

Many State HA's have not formally addressed the income averaging option in their Qualified Application Plans (QAP).

Many LIHTC investors are still reviewing the income averaging option for compliance issues related to projects going out of compliance based on the proper way to calculate the average across the project.

LIHTC Program:

Question: Are current projects already placed in service eligible to change their minimum set-aside election to income averaging?

- No. The minimum set-aside election is irrevocable once made on Form 8609.
- Income averaging is available, at the state's discretion, to new developments making their minimum set-aside election after March 23, 2018

LIHTC Program:

Question: Can State HA's modify the Housing Credit extended-use agreement for developments that are in the post year 15 year compliance period to allow for income averaging instead of the minimum set-aside originally elected at the time the Form 8609 was issued?

- No. IRC Section 42(h)(6)(B)(i) provides that the “applicable fraction,” the basis upon which “low income” is determined, throughout the extended use period be that originally specified in the extended use agreement.

LIHTC Program:

Income averaging applies to both income and rent limits. Therefore, if a unit has a designated limit of 80 percent of AMI, the maximum rent level that may be charged to a household in that unit is 30 percent of 80 percent of AMI.

Similarly, if a unit has a designated limit of 30 percent of AMI, the maximum rent level that may be charged to a household in that unit is 30 percent of 30 percent of AMI.

LIHTC Program:

Question: Will noncompliance with the income averaging option be reportable on IRS Form 8823?

- Yes. Basic noncompliance will work the same as it does with the other minimum set-asides. If a development elects income averaging and fails to meet the income averaging standard at the end of a year, it is not a qualified low-income housing development for the year under IRC Section 42(g)(1)(C), and this noncompliance must be reported to IRS Form 8823 and the owner could be subject to loss of Credits.

In order to meet the minimum set-aside, if owners select the new Income Average test, at least 40% of the units in the project must have rents and incomes at the various designated unit income limits selected by the owner and the average of the designated unit income limits may not exceed 60%. The test must be met for each building (BIN), unless the owner makes the 8609, Line 8b multiple building election.

<u>Unit</u>	<u>Designation</u>		
1	20%	6	60%
2	80%	7	60%
3	80%	8	60%
4	60%	9	60%
5	60%	10	60%

The average is 60% and all units are LIHTC eligible.

<u>Unit</u>	<u>Designation</u>		
1	50%	6	70%
2	50%	7	70%
3	50%	8	70%
4	50%	9	70%
5	50%	10	70%

The average is 60% and all units are LIHTC eligible.

- Many State Housing Agencies have not adopted formal policies to implement the average income option.
- Careful planning must be utilized to ensure the project remains in compliance.

The Average Income / Income Averaging option, if properly utilized, will allow LIHTC projects to serve higher income families.

Questions?

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