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Oregon Housing & Community Services

Affordable Rental Housing Division

Average Income Policy

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What is Average Income

Average Income is a minimum set-aside election under Section 42 of the Internal Revenue Code as authorized by The Consolidated Appropriations Act of 2018. The Average Income set aside is now a third option to the traditional minimum set aside election options of 20/50 or 40/60. Average Income allows a property to serve households of up to 80% of area median income (AMI), as long as the average income limit for all tax credit units in the project (as defined by the 8609 Line 8b election) is at or below 60% AMI. Income limit options under Average Income are expanded to include 20%, 30%, 40%, 50%, 60%, 70%, and 80% AMI designations.

Averaging is based on the AMI level assigned to the unit, not on the actual income of the household residing in the unit. AMI designations are allowed to float between units within the project (i.e. a particular unit is not locked into a specific AMI level) but the total unit mix must be maintained at 60% AMI or less. The agreed upon unit mix will be identified in the Reservation & Extended Use Agreement (REUA) and in the final declaration.

Please note: once selected, the minimum set aside election is irrevocable.

Election Requirements

Oregon Housing & Community Services requires that all projects utilizing the Average Income minimum set-aside election reflect this election in their project design and final construction product. Project designs that do not require the Average Income minimum set-aside election should not choose this set-aside election on the 8609 form.

Competitive projects may select the Average Income set-aside election for any project selected under the most recent Qualified Action Plan (QAP) (as of November 7, 2019). Waivers may be considered for non-competitive 4% tax credit deals awarded prior to policy implementation if the 8609 execution has not taken place. Waivers will be granted on a case by case basis and are bound by the provisions outlined in Appendix A.

Special Provisions & Applicability to 4% LIHTC / Tax Exempt Bond Developments

Section 142 (the tax-exempt bond regulations) was not amended to include Average Income provisions. Therefore, to be eligible for tax-exempt bonds under Section 142, a project must still meet a 20/50 or 40/60 minimum set-aside. However, for purposes of the 4% credit allocation, the project can elect to do Average Income. Therefore, a 4%/bond development can elect an Average Income minimum set-aside for purposes of tax credit compliance, as long as the unit mix selected would also meet either a 20/50 or 40/60 minimum set-aside test for purposes of bond compliance.

Development Requirements

Only new construction projects and rehabilitation projects not subject to an existing Declaration of Land Use Restrictive Covenants for Low-Income Housing Tax Credits are eligible to utilize Average Income. Applicants electing to use Average Income must comply with the following Oregon Housing & Community Services (OHCS) requirements:

a. The income average for the property cannot exceed 60% of area median income;
b. The income average for any bedroom type cannot exceed 60% of area median income;
c. Market rate units are prohibited;
d. For projects with more than one building, Owners must select that each building is part of a multiple building set-aside on line 8b in Part II of IRS Form 8609;
e. Owners must provide a market study/analysis addressing the need/demand for the income mix;
f. Owners must provide an acceptable Operating Budget indicating sufficient cash flow during the duration of the affordability period, and;
g. Owners are required to submit a written authorization from all permanent lenders and investors and/or public or private funders to utilize Average Income

Projects may select four (4) income bands or less consisting of: 20%, 30%, 40%, 50%, 60%, 70% & 80% area median income.

Any project utilizing Average Income will be subject to a property assessment fee. Properties may choose between a one-time assessment fee of $450 per unit (assessed on all units including employee units), to be paid prior to issuance of the project's IRS Form 8609. Properties may also choose to include these fees in their annual monitoring fees as an additional $15.00 per unit annual fee (assessed on all units including employee units). Average income fees are <u>in addition</u> to standard monitoring fees. The Average Income fee payment determination will become a part of the REUA process.

Assessment fees have been aligned with similar OHCS layered programs that require additional program monitoring such as bond funding. Assessment fees are subject to review and modification as determined necessary by OHCS.

Correct Unit Sizing Rule

One of the benefits of the Average Income set aside is the ability to provide additional units for families at lower income levels. To assure that rental benefits associated with these units are being received by families that need them, OHCS is introducing the "*Correct Unit Sizing Rule".* This rule requires that properties selecting Average Income as a set aside incorporate the following in their processes:

- Tenant incomes are to be certified annually
- Tenant incomes in units qualifying @ 20%, 30%, 40% or 50% of area median income (AMI) who have certified annual income at or above 140% of 60% (AMI) for two

consecutive annual recertification periods shall swap unit set aside requirements with the next available unit @ or above 60% of the AMI that is of a comparable or smaller size.

- Properties may requalify households who have had decreases in income at lower set aside provided a unit comes available meeting family unit size needs and this process is outlined in the properties tenant selection plan.
- Properties shall establish policies (approved by OHCS) to correct unit sizing for families qualified in 60% or 70% AMI units by swapping them with higher income units after two consecutive annual recertification periods reveal family income at or above 140% of their qualified income bracket.

Additional Compliance Monitoring Requirements: OHCS retains the ability to monitor all projects as determined necessary by OHCS staff.

a. Income and rent designations are required to float to maintain compliance with set-asides specified in the application.
b. All households must be certified annually in accordance to confirm the appropriate unit set-aside. No exception is allowed for projects using Average Income as the minimum set-aside.
c. All set-asides must follow the Multifamily Tax Subsidy Program (MTSP) income and rent limits as published by HUD Annually. Any units where income or rent exceeds the limit for the set-aside specified on the low-income certification will be reported to the IRS.
d. As part of the annual review of the Annual Owner Certification, the Agency will test compliance with the Average Income requirements.

Average Income Policy

Appendix A – Initial Implementation Provisions

Average Income Policy terms are applicable to all Low Income Housing Tax Credit (LIHTC) awardees making the Average Income set-aside election under the provisions of the 2020 Qualified Allocation Plan (QAP). All competitive LIHTC applications must specify this set-aside election within their competitive application. Non-competitive LIHTC awards may request a modification to their original election prior to issuance of 8609's.

To request a modification, the owner must submit the following information to the Assistant Director of Development Resources & Production (Roberto.Franco@Oregon.Gov):

- Update from the market analyst confirming that they have reviewed the proposed changes in income targeting and rents charged and that the changes will not negatively impact market demand
- Per QAP policy on modifications, a modification fee of $1,000 will be charged plus an additional fee of $1,500 if the recorded Restrictive Covenant Agreement must be amended and re-recorded. Owner must work with OHCS to amend the Restrictive Covenant Agreement if already recorded. All regulatory agreements must also reflect updated income and rent restrictions applicable to the project.

Approval is subject to OHCS' confirmation that (1) the owner's proposed plan meets the Average Income requirements; and (2) the application still meets OHCS' underwriting and market study threshold requirements. Updated regulatory documents will be required. OHCS will not approve any request that would result in a decrease in the total number of tax credit units committed to in the initial application.

OHCS requires approval prior to project lease up. Requests must be received by OHCS 60 days prior to planned lease up.