Income Averaging Compliance Policy

Overview:

The Consolidated Appropriations Act of 2018 (the Act) permanently established income averaging as a third set-aside election for new Housing Credit developments. This new income averaging set-aside allows Credit-qualified units to serve households earning as much as 80% of the Area Median Income (AMI), if the average imputed income limit of the property is 60% or less of AMI. Higher rents paid by households with incomes above 60% AMI will have the potential to offset the lower rents for households living in units designated at lower income levels. Income Averaging preserves rigorous targeting to low-income households, while providing greater income mixing potential.

The requirements listed below are subject to change.

Compliance Monitoring Requirements:

1. Income and rent designations are required to float to maintain compliance with minimum set-asides specified in the application. **The average income for the property cannot exceed 60%.**
2. Owners electing Income Averaging must commit to having at least 40% of the units in the property affordable to eligible tenants.
3. Income Averaging applies to the designated income/rent levels of the units, not the incomes of individual tenant households.
4. Income Averaging applies to both income and rent limits. If a unit has a designated limit of 80% of AMI, the maximum rent level that may be charged to a household in that unit is 30% of 80% AMI. Similarly, if a unit has a designated a limit of 30% AMI, the maximum rent level that may be charged to a household in that unit is 30% of 30% AMI.
5. Owners must distribute 20%, 30% 40%, 50%, 60% 70% and 80% units across the various unit types and sizes in a manner that does not violate Fair Housing Law.
6. The 30% AMI income and rent level under the Housing Credit program, for purposes of Income Averaging, is not the same as the Extremely Low-Income and rent restrictions under the National Housing Trust Fund (NHTF) statutes and regulations. Whereas NHTF statutes and regulations define “Extremely Low-Income” as the greater of 30% of AMI or the federal poverty line for applicable household size, the Income Averaging unit designation under the Housing Credit program is based solely on AMI. Properties that have layered National Housing Trust Fund with Credits should be mindful of this difference.

7. The next available unit rule provides that a unit is over income if the occupant's income exceeds 140% of the greater of 60% AMI or the designated limit applicable to the unit. This requires that the next available unit of comparable or smaller size be rented (A) to a tenant whose income does not exceed the designated limit applicable to a vacant, previously-designated unit, or (B) to a tenant at an income level that would not cause a violation of the minimum set aside requirements for all other units.
8. Households will be required to complete a full recertification within 120 days of the anniversary date of the initial certification (move-in date) to confirm the appropriate unit set-aside. At this time, KHC is only requiring the one full certification. No certification exception is allowed for 100% low income projects using average income as the minimum set-aside. If household income has increased to the next set-aside limit, the next available unit of comparable or smaller size must be rented to a household at the lower set-aside limit until the appropriate unit mix is restored. If household income decreases, it is acceptable to move the unit to the lower set-aside limit if a slot is available, but this is not mandatory.
9. Lower set-asides must follow the Multifamily Tax Subsidy Program (MTSP) income and rent limits as published by HUD annually. These limits can be accessed through the Novogradac website or the KHC website. 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 as non-compliant.
10. As part of the annual review of the Annual Owner Certification, KHC will test compliance with the Income Averaging requirements. Units out of compliance at year end, regardless of whether attributable to a low-income certification issue or a physical inspection issue, will be removed from the applicable fraction to determine whether the Average Income is acceptable and meets program requirements. If the minimum number of compliant units falls below 40%, or if the average income designation of compliant units is above 60% AMI, the entire project will fail to meet the required minimum set-aside and will be reported to the IRS as non-compliant.
11. Monitoring Fees will be charged at a rate of $50.00 per unit should an owner elect Income Averaging as the minimum set aside.
12. Additional education requirements for property management staff may be required for developments electing Income Averaging.
13. Basic noncompliance will be handled in the same manner as 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 will not be considered a qualified low-income housing development for the year under IRC Section 42(g)(1)(C). This noncompliance will be reported on IRS Form 8823 and the owner could be subject to a loss of Credits.

Please note: The IRS makes the ultimate determination if a development is in compliance with Income Averaging or any other elections made by the owner. Acceptance by KHC does not guarantee acceptance by the IRS. Owners should consult with their legal counsel. This policy is subject to change.