

The following guidance serves as an update to the original Draft Policy regarding Income Averaging posted on June 8, 2018. This guidance is applicable for Developments that are currently under construction or have recently completed construction and meet the following requirements:

- 9% Developments:
  - Received or will receive an allocation of 2018 or prior year credits
  - Have not received their 8609s
- 4% Developments:
  - Applied or will apply under the 2018 or prior year version of the rule
  - Have not received their 8609s

Florida Housing intends to take a blanket rule waiver (F.A.C. 67-48.023(2)) to the September 14<sup>th</sup> board meeting, which would allow all developments in one of the above categories to change their minimum set-aside election made at the time of application (20% at 50% or 40% at 60%) to the new Income Averaging set-aside election.

We intend to make this our last draft version with a comment period of two weeks from the date of release. We will take comments into consideration and issue Florida Housing's final guidance and policy decisions regarding Income Averaging. The final document will provide next steps for owners to take to pursue the Income Averaging set-aside election and begin the process.

#### **Florida Housing Requirements of Income Averaging**

- Units provided additional funding through the National Housing Trust Fund (NHTF) program, which are required to be set aside for households at or below 22% AMI, may not be offset by units designated at an AMI that is greater than the AMI category applicable to NHTF.
- For both 4% and 9% Housing Credit transactions, the overall AMI may be averaged up to 60%.
- On 4% Housing Credit transactions with SAIL, SAIL units must be Income Averaged along with the HC units.
- On 4% Housing Credit transactions that included SAIL ELI funding, Owners may choose one of the below two options:
  - If the ELI loan is repaid to Florida Housing (within a short period to be determined by Florida Housing), the development may income average all of its units, which must include at least a 5% ELI commitment for the entire 50-year affordability period.
  - If the ELI loan is not repaid to Florida Housing, the development may income average all of its units, which must include at least a 10% ELI commitment for the entire 50-year affordability period.
- The ELI set-aside for 9% Housing Credit Family and Elderly developments will be increased to a 15% set-aside.
- Workforce Housing Developments – We will allow Workforce Housing Developments to Income Average. Workforce developments that choose Income Averaging will have to commit to 10% ELI and the overall AMI may be averaged up to 60%.
- We have not made any decisions on allowing Income Averaging in specialized developments such as the Homeless or Disabling Condition Demographic. If there are owners with these types of developments that would like to elect Income Averaging, they should reach out to Florida Housing for further discussion.

- Regardless of the designated AMI category of the ELI County Chart, if Income Averaging is elected, all ELI units in a development will use the federal 30% AMI standard.
- If a development is already either partially or fully leased up, Florida Housing is concerned that the current incomes/rent may not meet the new Income Averaging requirements. Therefore, the review for the new Income Averaging set-aside will require evaluation of compliance with income and rent requirements for all households at income limit levels at or below 50% AMI, at the Developer's expense. The evaluation review must take place prior to approval of the change in set-aside commitments. It should be noted that it may be logistically impossible for some developments to meet the Income Averaging requirements if they have already begun or completed lease up.

All developments must adhere to the income averaging requirements outlined below. The approval of the change in set-aside designation will be subject to the following conditions:

- An updated Market Study will be ordered by the Underwriter and the Underwriter will provide an Update Letter to the original Credit Underwriting Report (at the Developer's expense). The Update Letter will reflect the new Income Averaging election and, at a minimum, will verify compliance with income/rent requirements of the existing households, summarize the findings of the updated Market Study and provide a new rental chart, Year 1 Pro Forma, and Underwriter recommendation. The election of Income Averaging will be contingent upon a positive recommendation from the Underwriter.
- The Applicant must comply with all ELI requirements of the new Income Averaging policy, which will be confirmed in the Update Letter to the underwriting report.
- The updated Market Study must be provided to the Syndicator and Permanent Lender, who in turn must each provide a letter to FHFC reflecting their respective acceptance of change. The Syndicator's letter should also detail the process they will undergo to review compliance with the new income/rent restrictions under the new Income Averaging set-aside election.
- The change in the set-aside election will require Board Approval.
- Once FHFC receives the updated Market Study, Update Letter to the Credit Underwriting Report and letters from the Syndicator and Lender, FHFC will proceed with an amendment to the existing Extended Use Agreement (if applicable). Upon execution by all parties, FHFC will send the Amended EUA to the appropriate county for recording. Upon receipt of the recorded Amendment and satisfaction of all other Housing Credit requirements, FHFC will release the 8609s.
- If the Link Memorandum of Understanding has been executed, it must be re-executed with the updated Link unit numbers if necessary.
- There will be additional fees associated with changing the income set-aside election for the update to the Market Study and CUR, which will be set forth at a later date.

### **Other Considerations**

- For IRS Housing Credit purposes, Income Averaging will be applied to ALL buildings in a development that contain set-aside units.

- Each building or each designated multiple building project within a HC development, as applicable, must individually meet Income Averaging requirements.
- It should be noted that if Income Averaging is chosen and a property has NHTF units that Florida Housing has specified, these units will not be included in Income Averaging calculations. For purposes of the IRS, these units will be considered 60% AMI units. For Florida Housing purposes, these ELI units will not be included in the Income Averaging calculation and may not be offset by units designated at an AMI that is greater than the AMI category applicable to ELI.
- Income Averaging will not be based on number of bedrooms in a unit and FHFC will allow for floating unit designations, unless future IRS guidance is released that conflicts with this policy. However, for the preparation of the Extended Use Agreement (and any applicable Land Use Restriction Agreement), the number of qualifying Housing Credit units at each IRS AMI tier must be identified by the Applicant.
- Income Averaging applies to both income and rent limits.
- A development that is undergoing resyndication should proceed with caution. The requirements of the original EUA will not cease and the Income Averaging election cannot conflict with existing EUA set-aside requirements. We will take developments into consideration on a case by case basis, but it may be impossible to meet income/rent set-aside requirements of both EUAs during the first thirty years of the original EUA. The applicable fraction at the end of the first year of the original Credit Period must be maintained throughout the term of the original EUA.
- Income Averaging does not apply to the separate tax-exempt bond set-aside requirements. Therefore, set-aside requirements related to the tax-exempt bonds must be met within the units designated at or below 60% AMI.

Compliance Monitoring Fees will be higher for Income Averaging transactions versus the traditional 20% at 50% or 40% at 60% set-aside commitments due to the additional complexity and work required in monitoring.