

# RIHousing

## PROGRAM BULLETIN

**Date:** July 9, 2018  
**To:** Development Community  
**From:** Eric Shorter, Director of Development  
**Subject:** Income Averaging  
**Bulletin #:** 2018-02

### Overview

The Consolidated Appropriations Act of 2018 (the “Act”) permanently established income averaging (“Income Averaging”) as a third minimum set-aside election for new developments funded with low-income housing tax credits (“LIHTC”). This new Income Averaging set-aside allows LIHTC qualified units to serve households earning as much as 80 percent of Area Median Income (“AMI”), if the average imputed income/rent limit of the property is 60 percent or less of AMI. Higher rents paid by households with incomes above 60 percent of AMI will have the potential to offset the lower rents paid by households living in units designated at lower income levels. Income Averaging will help to support RIHousing’s goal of targeting lower-income households and provide greater income-mixing potential.

The Internal Revenue Service has not yet issued guidance regarding the implementation of Income Averaging. Currently, RIHousing is relying on the interpretations of partners such as the National Council of State Housing Agencies and other industry experts.

### **RIHousing will implement the following requirements for Income Averaging:**

1. No development that has closed and has a recorded Declaration of Land Use Restrictive Covenants (the “Tax Credit LURA”) can change their targeting to incorporate Income Averaging.
2. Any new production development that has not closed as of issuance of this Program Bulletin and does not have a recorded Tax Credit LURA, is eligible to implement Income Averaging.

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3. Owners that elect Income Averaging must have an average income targeting that does not exceed 58% AMI. The purpose of this provision is to ensure that developments remain in compliance with the federal maximum requirement of 60% AMI under Income Averaging.
4. RIHousing reserves the right to disallow any clear unit skewing by unit size. RIHousing will require applicants to provide reasonable parity between different bedroom sizes at each targeted income band utilized in the development.
5. Income Averaging will only be permitted in a development if all residential units are designated low-income and the development does not contain any market-rate residential units. Low-income, for this purpose is defined as units affordable to persons earning 80% of AMI or less.
6. Owners of developments with more than one building must indicate on the Forms 8609 to treat all of them as part of a multiple building project (checking “Yes” on line 8b of the current form).
7. Any development seeking to implement Income Averaging must be able to demonstrate that:
  - a. The proposed rents are achievable based on a RIHousing commissioned appraisal and are strongly encouraged to underwrite at rents that are less than the maximum 80% rents.
  - b. The limited partner has approved the proposed income averaging and this is reflected in their Letter of Intent and LPA.
  - c. The borrower incorporates income averaging into their tenant selection plan and other related management documents.
  - d. The selected property manager has demonstrated the ability to effectively manage properties subject to federal housing compliance regulations. The property manager must disclose any noncorrected 8823 findings currently outstanding on properties in their portfolio as well as all open Management and Occupancy Reviews with an unsatisfactory or failing compliance score. RIHousing reserves the right to deny the implementation of Income

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Averaging at its discretion, solely based upon previous compliance related performance of the property manager

8. Properties that elect the Income Averaging set-aside are subject to additional education requirements for property management staff and additional third-party reporting requirements to RIHousing.
9. Prior to closing, Owners must provide a matrix showing the designated AMI percentage(s) by unit size. Owners are encouraged to let the units float to ensure overall compliance.
10. RIHousing reserves the right to charge a higher tax credit monitoring fee for developments that elect Income Averaging.

## **4% Tax Exempt Bonds/4% Credit Applications**

RIHousing will permit the income averaging option only for 4% tax credit applications that have not yet closed and signed a LURA.

The Act modifies Internal Revenue Code (“IRC”) Section 42 to allow for Income Averaging, but does not make a similar change in IRC Section 142, which covers tax exempt facility bonds, including multifamily housing bonds. However, Income Averaging may still be used in bond-financed LIHTC developments so long as the development satisfies both the income averaging minimum set-aside election and one of the minimum set-aside elections applicable to tax-exempt bond financing (20/50 or 40/60 minimum set-aside). Thus, units with income limits above 60 percent or 50 percent, as applicable, do not count for purposes of bond compliance.

## **Resyndication Applications:**

Any property seeking tax credits for resyndication of previously awarded tax credit properties will not be eligible to select the Income Averaging set aside. The IRS has issued no guidance regarding this issue, however, the election of new income targeting would negate obligations under an existing extended use agreement, so the owner would, in effect, have to comply with the more stringent rules applicable to each particular unit if it were to change its election upon resyndication. Given the complexity of complying with two separate minimum set-aside rules, RIHousing has decided not to allow income averaging for such resyndications.

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## **THE FOLLOWING ARE GENERAL STATUTORY REQUIREMENTS OF INCOME AVERAGING:**

- Under income averaging, at least 40 percent of the units in the property must be affordable.
- 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.
- Income averaging applies to both income and rent limits. 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.
- The 30 percent of AMI income and rent level under the Housing Credit for purposes of income averaging is not the same as the Extremely Low-Income and rent restriction under the National Housing Trust Fund. The Housing Trust Fund statute and regulation define “Extremely Low-Income” as the greater of 30 percent of AMI or the federal poverty line for applicable household size. Income averaging unit designation is based solely on AMI. Properties that have layered National Housing Trust fund with credits should be mindful of this difference.
- 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 the IRS on Form 8823 and the owner could be subject to loss of Credits. We expect that the IRS will revise the Form 8823 and its instructions accordingly.

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## **About RIHousing**

Together with its partners, RIHousing works to ensure that all people who live and work in Rhode Island can afford a healthy, attractive home that meets their needs. RIHousing uses all of its resources to provide low-interest loans, grants, education and assistance to help Rhode Islanders find, rent, buy, build and keep a good home. Created by the General Assembly in 1973, RIHousing is a privately funded public purpose corporation.