



New York State Homes & Community Renewal Income Averaging Guidance

The Consolidated Appropriations Act of 2018 has established Income Averaging (“IA”) as a third minimum set-aside election for housing tax credit developments. The IA election allows developments to have an average imputed income limit of up to 60% of Area Median Income (“AMI”) by targeting a percentage of units at higher (80% AMI and/or 70% AMI) and lower (50% AMI, 40% AMI, 30% AMI, and/or 20% AMI) income levels.

HCR IA Eligibility and Goals

To use IA, at least 40 percent of the units must be rent-restricted and occupied by tenants whose incomes do not exceed the average designated imputed income, which cannot exceed 60% AMI.

Projects using tax-exempt bond financing must also meet the standard set aside requirement of 20 percent of the units affordable to households with incomes at 50% or less of AMI or 40 percent of the units affordable to households with incomes at 60% or less of AMI. Units set above 60% AMI do not satisfy IRC Section 142 rules.

HCR may approve IA upon the applicant’s demonstration that utilizing IA:

- allows greater income diversity and deeper affordability by enabling higher-income units to offset lower-income units;
- reduces the amount of HCR resources needed; and/or
- directly advances the State Housing Goals as articulated in the Open Window or Unified Funding Request for Proposals.

Approval Process and Requirements

Timing and Consent

- Projects must elect IA at the time of application (for projects seeking 9% LIHTC) or prior to construction closing (for projects seeking tax-exempt bond financing and 4% LIHTC).
- Applicants who elect to utilize IA must provide written approval that the project investor/syndicator has consented to its use.

State Low Income Housing Credits (SLIHC) Eligibility

SLIHC will not be permitted in projects utilizing IA.

Income Bands

The designated imputed income limits must be in 10% increments ranging from 20% to 80% of AMI.

Market Study

For projects outside the City of New York, a required professional market study must demonstrate demand at each AMI tier and rent level. Furthermore:

- To support an 80% AMI income tier, a project may not propose rents below the 60% AMI level (30% of 60% AMI), and
- To support a 70% AMI income tier, a project may not propose rents below the 50% AMI level (30% of 50% AMI).

Distribution and Designation of Units

- Units at all income bands must be reasonably and proportionally distributed throughout the project and across buildings in multi-building projects.
- Units of different income tiers must be equitably distributed among unit types, with the exception of integrated supportive housing projects.
- All units in projects utilizing IA must have substantially similar features, amenities and finishes and must be roughly comparable in size by unit type regardless of the income level targeted.
- Units must be designated prior to construction closing with such designation made part of the regulatory agreement.

Additional Considerations

As applicants consider whether to seek approval to utilize IA, they should be aware of the potential compliance risks that are associated with election of income averaging. Once the minimum set-aside election is made, it is irrevocable, and failure to satisfy the minimum set-aside test throughout the initial 15-year compliance period will result in recapture of the credit for all units. Adherence to many compliance requirements, such as the next available unit (“NAU”) rule, may be more challenging than in a LIHTC transaction without IA. This is especially true for mixed-income developments that include market rate units.

HCR reserves the right to amend this guidance and associated Asset Management fees at any time and/or impose additional requirements or demand additional support to utilize IA.

Additionally, HCR may elect to defer to the specific IA guidance and policy of a local Housing Credit Agency, in whole or in part, to facilitate the development of mixed-income housing in that locality.