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income averaging

policy
8.1.2019

disclaimer

The Income Averaging (IA) Compliance Guidance summarized here is provided only as a highlight of some of the federal requirements as of the date of this guidance and is not intended to provide, and should not be relied on for, tax, legal or accounting advice. Please note, that as of the date of this guidance the IRS has not issued full and definitive guidance on how the election will be administered or monitored. Additionally, this guidance is based on information obtained from publicly available sources, the completeness and accuracy of which have not been independently verified, and only reflects CHFA's guidance as of the date of this summary, all of which is subject to further review and change. Any project considering the IA election should do so in consultation with its tax, legal, and accounting advisors.

Background

The Income Averaging (IA) provision of the Low Income Housing Tax Credit (LIHTC) program was part of the 2018 Omnibus Spending Bill, also known as The Consolidated Appropriations Act, which was signed into law on March 23, 2018.

IA is a new minimum set-aside election that can be made by an owner of an eligible LIHTC project which would allow some LIHTC-eligible units to be designated as high as 80% or as low as 20% of the applicable Area Median Income (AMI). This would allow property owners to provide affordable housing to households previously not served by the program because their earnings exceeded the 60% AMI limit while also providing deeper affordability to extremely low income households who previously could not afford the higher tax credit rents.

Owners would have the option to make the IA minimum set-aside election in lieu of the 20/50 or 40/60 minimum set-aside election on their IRS 8609 tax form(s); however, the average of the income limitations designated cannot exceed 60% AMI.

Federal Statutory Requirements for IA

The following is a highlight of some of the key federal requirements for IA:

- At least 40% of the units must be rent restricted and occupied by households whose incomes do not exceed the income limitations designated by the taxpayer.
- IA applies to the designated income and rent levels of the units, not the incomes of individual resident households.
- Designated income and rent levels are set in 10% increments as follows:
 - 20% AMI

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- 30% AMI
- 40% AMI
- 50% AMI
- 60% AMI
- 70% AMI
- 80% AMI
- The minimum set-aside election is irrevocable once made on the IRS Form 8609. Therefore, existing projects already placed in service are not eligible for the IA election.
- The Next Available Unit Rule (NAUR), as modified by the new statutory language, (i) provides that a unit is over income if the household's income exceeds 140% of the greater of 60% AMI or the designated income limit applicable to the unit and (ii) requires that the next available unit of comparable or smaller size be rented (a) to a household whose income does not exceed the designated limit applicable to the new unit, if it was previously a low-income unit or (b) to a household at an income level that would not cause a violation of the 60% average, if the new unit had not previously been a low-income unit. Owners should consult with compliance experts to ensure the NAUR is being met.
- The 30% AMI income and rent limit under the LIHTC program for purposes of IA is not the same as the extremely low income limit under the National Housing Trust Fund requirements. Owners that have layered National Housing Trust funds with LIHTCs should be mindful of this difference as well as differences between the LIHTC income and rent limits and those of other programs that apply to a project.
- Refer to the 2019 QAP for CHFA's requirements on equitable distribution of units and targeting levels.
- Noncompliance with IA will be the same as with other minimum set-asides. Failure to meet the IA standard for the first year of the credit period results in the permanent loss of the entire credit. Failure to maintain the IA standard for any year after the first year of the credit period results in no allowable credit for that tax year.

Note: The above is merely provided as a highlight of some of the federal IA requirements as of the date of this guidance and is not intended to provide, and should not be relied on for, tax, legal or accounting advice. Additionally, it is based on information obtained from publicly available sources, the completeness and accuracy of which have not been independently verified; reflects current conditions; and CHFA's views as of this date, all which are subject to change. You should consult your own tax, legal, accounting, and other advisors before engaging in any transaction.

CHFA Timelines for Implementation

CHFA will implement this IA policy effective January 1, 2019. Reference to IA implementation will be included in CHFA's Qualified Allocation Plan (QAP), LIHTC excel application, and other applicable forms for 2019.

Projects Eligible for IA

2019 Applications

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CHFA will accept LIHTC applications requesting the IA election for projects with 100% LIHTC units starting January 1, 2019. The IA election may be requested for 9% federal LIHTC, 4% federal LIHTC, and 4% federal/state AHTC applications for new construction or acquisition/rehabilitation projects.

In instances where CHFA awards acquisition/rehabilitation LIHTC for projects with existing LIHTC restrictions in place, the IA election would not go into effect until the end of the prior extended use period under the previous LURA.

CHFA, as the LIHTC allocating agency, is required to give preference to projects that serve the lowest income households for the longest period of time under the federal Internal Revenue Code, Section 42. Further, all applications will be evaluated in accordance with the QAP.

For 4% projects, the minimum set-aside requirements must be met for tax-exempt bond financing in addition to the IA election for LIHTCs. Units with income limits above the tax-exempt bond minimum set-aside (60% or 50% AMI as applicable), do not count for purposes of bond compliance.

Projects Approved for LIHTC Prior to 2019

Projects that received an award of LIHTC prior to 2019 may be eligible for IA only under the following conditions:

- The project is a 4% project with no competitive (state or 9% federal) credit, **and**
- The project units are 100% LIHTC **and**
- All projects must submit the following:
 - An updated LIHTC application using the 2019 excel application reflecting the new IA designations and any other change from the previous application;
 - A revised market study that incorporates the IA designations in the demand analysis; The revised market study must match the submitted application regarding income targeting, unit mix, unit sizes, and rents.
 - Written consent of the IA election from the proposed permanent lender(s), and equity provider, and any other anticipated funding sources prior to issuance of the IRS 8609.
 - Refer to the QAP and the IA Compliance Policy regarding owner and agent trainings required prior to the issuance of the IRS 8609.
- All requests are subject to review and approval of CHFA as well as availability of additional tax-exempt bond cap if needed for the project changes.

Projects Not Eligible for the IA Election

The following types of projects will not be eligible for the IA election:

- Applications requesting the IA election for projects that include non-LIHTC/market rate units
- Applications that were awarded competitive credit (state or 9%) prior to 2019
- Projects that placed in service prior to December 31, 2018

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For More Information

For additional information including CHFA's Frequently Asked Questions (FAQs) please visit <https://www.chfainfo.com/arh/lihtc/income-averaging>