



NCSHA

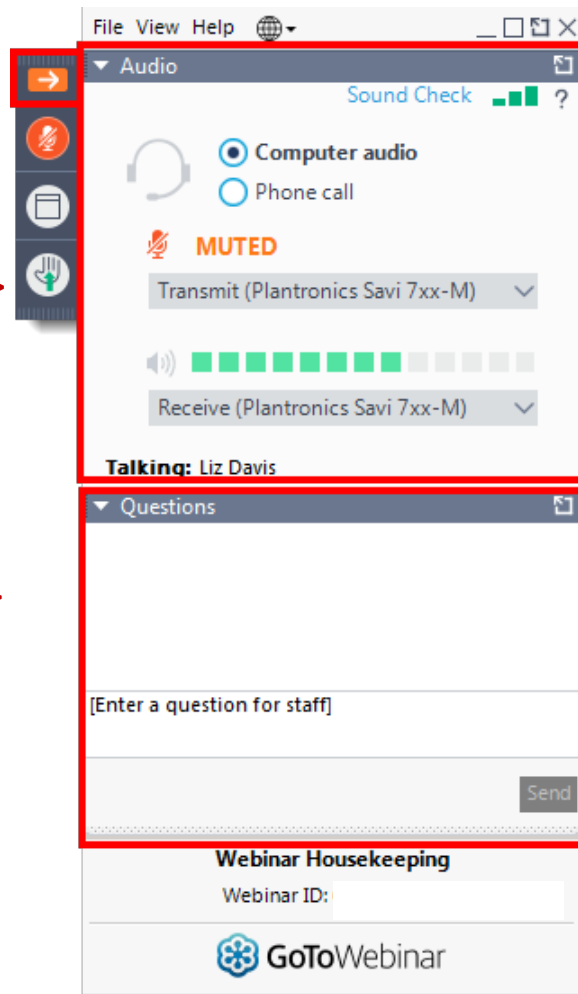
National Council of State Housing Agencies

HOUSING CREDIT INCOME AVERAGING STATE IMPLEMENTATION

Attendee Interface

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Our Panelists

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What Is Income Averaging?

- NCSHA legislative priority; enacted as part of the Consolidated Appropriations Act of 2018.
- New minimum set-aside option allowing qualified units to serve households earning up to 80 percent of AMI, as long as the average limit in a development is no more than 60 percent of AMI.
- At least 40 percent of units in the development must be income qualified.

What Is Income Averaging?

- Applies to unit designations, not individual tenant incomes.
- Designations must be set at 10 percent increments (20, 30, 40, 50, 60, 70, and 80 percent of AMI).
- NCSHA believes the decision to allow income averaging is at the discretion of the state.

Example: 10-Unit Project

1 unit at 80% AMI
8 units at 60% AMI
1 unit at 40% AMI
= 60% average

2 units at market rate
3 units at 80% AMI
2 units at 50% AMI
3 units at 30% AMI
= 53.75% average

3 units at 80% AMI
3 units at 60% AMI
2 units at 50% AMI
2 units at 20% AMI
= 56% average

Rent Limits Under Income Averaging

Income averaging applies to **both** income and rent limits.

- Rent limit on an 80 percent unit is 30 percent of 80 percent of AMI.
- Rent limit on a 30 percent unit is 30 percent of 30 percent of AMI.

The higher rent charged on the 80 percent unit allows you to offset the lower rent charged on the 30 percent unit.

State and Federal Implementation Actions

Income averaging is a permanent part of the tax code, effective March 23, 2018, for new developments making the minimum set-aside election and requires no formal action from states, IRS, or HUD.

But, in a perfect world:

- States would modify their QAP (or related documents) to provide guidance to applicants.
- IRS would revise Forms 8609 and 8823.
- IRS would issue guidance on issues lacking clarity.
- HUD would issue new income limits for each of the 10 percent increment designations.

Eligible Developments

- 2018 and future awards? **Yes, at state discretion**
- 2016 and 2017 carryover allocations without completed 8609? **Yes, at state discretion**
- Existing developments with completed 8609? **No**
- Resyndication? **Technically possible, but limited applicability**

Application to Bond-Financed Deals

- While the Act does not change §142, income averaging may still be used in bond-financed Housing Credit developments as long as the development satisfies both the IA minimum set-aside and one of the minimum set-asides applicable to tax-exempt bond financing.
- Units with income limits above 60 percent or 50 percent, as applicable, do not count for purposes of bond compliance.

Unit Designation

- The Code does not specify the process by which owners may designate units at specific income limits.
- Absent contrary guidance from IRS, states have the authority to determine a process for unit designation.
- NCSHA encourages states to incorporate unit designations into extended-use agreements and carryover allocations.

Shifting Unit Designations

- The Code is not clear as to whether a unit's designation can be changed.
 - Next available unit rule will necessitate some shifting of units in mixed-income developments.
- Absent contrary IRS guidance, states may decide whether to permit shifting designations in 100 percent low-income developments.
 - Formal notice and documentation process
 - Unit parity policies
 - Consider development and compliance perspectives

Next Available Unit Rule

- A tenant is over income if his/her income exceeds 140 percent of the greater of 60 percent of AMI or the designated limit for his/her unit.
- If a tenant goes over income, must rent next available unit to a qualified tenant.
 - If the available unit is a low-income unit, that unit stays at its designated level, regardless of the designated level of the over-income tenant's unit.
 - If the available unit is a market-rate unit and there is one over income tenant, the available unit becomes a low-income unit designated at the level of the over-income tenant's unit. The designation is not clear if there are more than one over income tenant.

Compliance Considerations

- Allowing shifting of unit designations in 100 percent low-income developments
- Charging higher compliance monitoring fees to Income Averaging developments
- More regular tenant income verification — even for 100 percent low-income developments
- Monitoring multiple building projects
- Noncompliance reporting

Potential IRS Guidance

- What process should states use for designating units?
- Once set, can unit designations be changed?
- What happens when one unit is out of compliance causing the average to go above 60 percent?
- How to set next available unit designation when multiple tenants in units of different designated income levels go over income at the same time?
- Explore application to existing developments?

Questions?





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