



FROM: VHDA Rental Compliance & Asset Management
TO: VHDA Rental Tax Credit Portfolio
RE: VHDA Average Income Adopted Guidelines Memo
DATE: August 2019

These guidelines are subject to change pending IRS guidance on Average Income.

Federal Requirements Minimum Set-Aside

The "Consolidated Appropriations Act of 2018", effective March 23, 2018 established a third minimum set-aside election for Housing Credit allocations to include income and rent limits at 20%, 30%, 40%, 50%, 60%, 70% and 80% AMI for low-income households. In order to qualify for a Tax Credit Allocation, a development must meet one of three minimum threshold occupancy tests:

- 1.** At least 20% of the units must be rent restricted and occupied by persons whose income are 50% or less of the area median income adjusted for family size. This is known as the **20/50 minimum set-aside**.
- 2.** At least 40% of the units must be rent restricted and occupied by persons whose income are 60% or less of the area median income adjusted for family size. This is known as the **40/60 minimum set-aside**.
- 3.** At least 40% of the low-income **units** in the **project** are income qualified, rent restricted, and occupied by individuals whose income does not exceed the imputed income limitation designated by the taxpayer at an average of 60% AMI or less. This is known as the **Average Income minimum set-aside**

The minimum set-aside establishes the qualified project, as well as the applicable income and rent limits for all designated low-income units in the project.

Taxpayer Responsibilities

The Internal Revenue Service has not provided guidance on monitoring the Average Income minimum set-aside. The taxpayer is responsible for confirming that the development has qualified low-income buildings under IRC §42(g)(1), and must carefully consider the risks in implementing Average Income. It is strongly recommended that taxpayer (owner) work with their lender(s), investor partners, management agents, and industry Compliance professionals to understand and limit compliance risks with Average Income.

VHDA Average Income Requirements

The taxpayer (owner) agrees to choose:

- 1.** No market units, 100% Applicable Fraction
- 2.** 60% Average AMI for all designated units in the project
- 3.** "Yes" on Line 8b in Part II of the IRS 8609 for a multiple building project to include **all** physical buildings or Building Identification Numbers in the proposed development. The taxpayer must include the required attachment listing all buildings in the project to the IRS, then send a copy of the completed Part II form to VHDA Rental Compliance & Asset Management.
- 4.** All income limitations from 20% to 80% AMI can be designated in VHDA funded projects.

The Average Income Test

The actual income of the households is not tracked and averaged on an annual basis to calculate project's Average Income. The Average Income test is calculated based on the average of the units designated at each AMI.

Projects Ineligible for Average Income

Projects with an executed Part II of the 8609 as of March 23, 2018 for **any** BINs in the project are **not eligible** to elect Average Income

Tax Exempt Bonds 4% Tax Credit Allocations

The Average Income minimum set-aside does not apply to Tax Exempt Bond 4% developments. Therefore, if elected, the project must meet both the VHDA Average Income requirements **and** the Federal Tax Exempt Bond minimum set-aside requirements throughout the Extended Use Period. This means at least 40% of all low income units must be designated at 60% AMI or below and maintained throughout the Extended Use Period.

Existing Projects - Request to Elect Average Income

Projects approved for a Tax Credit Allocation prior to March 2018 may submit their request to the VHDA Tax Credit Allocation department to change their proposed minimum set-aside to Average Income.

Designated Units – Reservation Application

The units are designated at the time of the Reservation Application, using the Unit Details form in the LIHTC Application Workbook.

Unit Designation Non-Compliance

Units lost to non-compliance and discovered by VHDA will be reported to the IRS as required in all applicable categories.

Unit Details Form in the LIHTC Application Workbook

The Unit Details form in the LIHTC Application Workbook is used to provide the proposed unit designations and confirm the AMI assigned at each income level and bedroom size for the project before the taxpayer elects Average Income on Part II of the 8609 form.

Unit Distribution (Parity)

The units must be reasonably distributed across all AMI levels **and** bedroom sizes in the proposed project using the Unit Details form.

Floating Units - Changes to the Unit Designation

The taxpayer (owner) may change the AMI designated on a unit as needed to maintain the Applicable Fraction and VHDA adopted Average Income of 60% AMI for the project. This change may occur at initial occupancy, upon annual recertification, or at any other time as requested by the tenant or permitted by the management agent for income increases or decreases discovered throughout the Compliance and Extended Use Period.

Floating units allow each project to adapt to the needs of existing or potential tenants, to maintain the Applicable Fraction, required set asides, or changes in tenant demand throughout the Extended Use Period.

VHDA QAP Points for lower set-asides at 30%, 40%, and 50%

The minimum set-aside election falls under Threshold, however point incentives may be included for maintaining a fixed number of 30%, 40% and 50% units throughout the Extended Use Period. Although the unit designation may change, the number of units with eligible households at 30%, 40%, and 50% must be maintained throughout the Extended Use Period.

These units are counted towards meeting the overall Average Income as long as the household is income eligible and pays the unit designated AMI gross rent throughout the Extended Use Period.

Extended Use Agreement (EUA)

The recorded Extended Use Agreement (EUA) will include language for the required number of units for which points incentives were awarded along with the requirement to maintain an average of 60% AMI for at least 40% of the total low income units **and** 100% Applicable Fraction.

Extended Use Agreement (EUA) & 2nd Allocation of Tax Credits

A new set-aside election for a re-allocation of Tax Credits does not terminate the obligations under the original EUA. The EUA will include the requirements under both Agreements and the project will be monitored according to the most restrictive requirements.

Applicable Fraction

The project **must** maintain the applicable fraction designated in the Extended Use Agreement.

Income Limits

The FY2019 MTSP income limit tables only include 50% and 60% AMI. In the absence of guidance from IRS or Treasury, VHDA will use the HUD published Multifamily Tax Subsidy Project (MTSP) and HERA Special **50% limits** to calculate the income limits at each AMI permitted under Average Income.

VHDA Program Limits Excel Spreadsheet

VHDA created an Excel spreadsheet that contains the current published MTSP, HERA Special, and National Non-Metropolitan income limits and calculated rent limits for the Tax Credit program, as well as the Not-Adjusted for Family Size (AFS) limits applicable for the VHDA Loan programs. The form is on the VHDA website.

Income Limit Calculation Factors for Average Income

20% AMI = 50% AMI x 0.4

30% AMI = 50% AMI x 0.6

40% AMI = 50% AMI x 0.8

70% AMI = 50% AMI x 1.4

80% AMI = 50% AMI x 1.6

Average Income Rent Limits Calculation

Absent IRS guidance, the rent limits will be calculated by using the HUD published MTSP income limits and the calculation factors above for each set-aside from 20% to 80% AMI.

Extremely Low Income Limits (ELI)

The 30% AMI level calculated for Average Income is not the same as the Extremely Low Income (ELI) restriction under the National Housing Trust Fund. Taxpayer (owner) of project with both programs must be mindful of the difference and follow the most restrictive program requirements for designated units.

Next Available Unit Rule (NAU)

The taxpayer (owner) must rent the Next Available Unit according to the lowest percent designation among the unit with over income households.

Tax Credit 9% & Tax Exempt Bond 4%

By statute, annual certifications for income eligibility are not required for 100% low income Tax Credit projects. However, VHDA requires all Tax Credit and Tax Exempt Bond projects to complete one full annual certification with supporting documentation showing household income and student eligibility after the initial qualifying certification for all designated low-income units. The supporting documentation includes, but is not limited to verification of income, assets and student status.

Student Status – Although VHDA does not require annual certification of household income for 100% low income projects, student status must be verified annually for all designated low-income households throughout the remainder of the Compliance Period.

Online Tenant Activity Monitoring - The VHDA online tenant activity monitoring system must be updated annually with current rent, utility allowance, and student status information for all designated low-income units throughout the Compliance Period.

Any non-compliance discovered and corrected before receiving notice of HFA tenant file audit or physical inspection is not reportable to the IRS, and shows due diligence in managing the program requirements.

Important Project Documents

Qualified Allocation Plan (QAP)

The Qualified Allocation Plan identifies the selection criteria to be used for determining housing priorities in Virginia, and gives preference to projects serving the lowest income tenants, for the longest periods, for with the highest number of low-income units. The QAP also guides compliance with the project rules based upon the year the project was awarded federal housing credits.

Tax Credit Manual

The Tax Credit Manual supports the VHDA QAP, and provides guidance and instruction for policies and qualifications related to the federal housing credit program. The VHDA Average Income minimum set-aside requirements for implementation can be found in the Appendix section of this document.

LIHTC Application Workbook used for Tax Credit Allocations

The taxpayer (owner) submits the workbook before the project is built and on-site staff is hired. The VHDA LIHTC Application Workbook includes the unit mix, point categories, and other project requirements to maximize VHDA approval of an allocation of Tax Credits.

The unit mix for the minimum set-aside, including Average Income is identified on the **Unit Details form** in the VHDA Excel Housing Credit Workbook.

Extended Use Agreement (EUA)

The EUA identifies the specific requirements the taxpayer (owner) project must meet and aligns with the QAP, the VHDA Housing Credit Workbook, and the IRS form 8609. The EUA also lists the project Applicable Fraction, which is the required total percentage of qualified low-income units required at all times in the project.

Section 5 of the EUA contains the required occupancy, income and rent restrictions, and other requirements for the project for 30+ years.

8609 Form Part I – Issued by VHDA

VHDA issues Part I of the IRS 8609 form to the taxpayer (owner) with the Housing Credit amount for each building. Part I of the form also includes the project allocation date and placed in service date.

8609 Part II Executed by the Taxpayer (Owner)

The taxpayer (owner) must complete and sign Part II of the IRS 8609 form to define the project in line 8b, identify the beginning of the Credit Period in line 10a, and select the minimum set-aside election in line 10c.

Once Part II is complete, the taxpayer (owner) sends the completed form to the IRS with the required attachment that identifies all BINs in the project (line 8b) by the end of the first year of the Credit Period. A copy of the executed 8609 Part II and attachments must also be sent to the VHDA Compliance Officer assigned to the project.

VHDA Year End Annual Owner's Certification

It is the taxpayer's (owner) responsibility to acknowledge and certify the project's continuing compliance and identify non-compliance with the requirements of Section 42 of the Internal Revenue Code on an annual basis in a report to VHDA.