



FROM: Virginia Housing Rental Compliance & Asset Management
TO: Virginia Housing Rental Tax Credit Portfolio
RE: Average Income Guidelines
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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 (AIT)**

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 taxpayer (owner) 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 work with their lender(s), investor partners, management agents, and industry Compliance professionals to understand and limit compliance risks with Average Income.

Average Income Requirements

The taxpayer agrees:

1. 60% Average AMI for all designated units in the project
2. "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 (BIN). 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 Compliance & Asset Management.
3. All income limitations from 20% to 80% AMI can be designated to units.
4. Unit designations **must** float
5. At least 40% of all low-income units designated at 60% AMI for 4% Tax Exempt Bond.
6. 100% Applicable Fraction (when possible)

The Average Income Test (AIT)

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

Existing Projects - Waiver Request for AIT

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

Tax Exempt Bonds 4% Tax Credit Allocations

At the time of this guidance, the AIT Minimum Set-Aside does not apply to Tax Exempt Bond 4% developments. Therefore, if elected, the project must meet both the AIT requirements **and** the Federal Tax Exempt Bond minimum set-aside requirements throughout the Extended Use Period. For 4% allocations, Virginia Housing requires at least 40% of all low income units designated at or below 60% AMI and maintained throughout the Extended Use Period.

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 Virginia Housing will be reported to the IRS as required in all applicable categories.

Unit Details Form 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 may change the AMI designated on a unit as needed to maintain the Applicable Fraction. This change may occur at any time at the discretion of the management agent, or as requested by the tenant for income increases or decreases, or need to fill a vacant unit throughout the Compliance and Extended Use Period. Approval is not required before a unit designation change

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.

QAP Points for lower limitations at 30%, 40%, and 50% AMI

The Minimum Set-Aside election falls under the QAP Threshold, however point incentives may be awarded 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 Test 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** the Applicable Fraction.

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

A new set-aside election on IRS form 8609 for a 2nd 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.

Average Income Published Limits

The MTSP Income Limit tables only include 50% and 60% AMI. HUD created a query data tool on their website to provide the Average Income limits

https://www.huduser.gov/portal/datasets/il/il2020/select_Geography_incavg.odn

Program Limits Excel Spreadsheet

Compliance & Asset Management 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 Virginia Housing Loan programs using the Section 8 Income Limits. The form is on the Virginia Housing 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

The AIT rent limits are calculated using the HUD published AIT Income Limits and the calculation factors above for each limitation at 20% up 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 (project owner) may choose to rent the Next Available Unit according to the lowest percent designation **or** according to the unit designation to meet the AIT in the project.

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, Virginia Housing 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 – Student status must be verified annually for all designated low-income households throughout the remainder of the Compliance Period.

Online Tenant Activity Monitoring - The 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 Information

Qualified Allocation Plan (QAP)

The Qualified Allocation Plan (QAP) identifies the selection criteria for determining housing priorities in Virginia, and gives preference to projects serving the lowest income tenants, for the longest periods, 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 QAP, and provides guidance and instruction for policies and qualifications related to the federal housing credit program. The Average Income Minimum Set-Aside requirements can be found in the Appendix section of this document.

LIHTC Application Workbook used for Tax Credit Allocations

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

The unit mix for the Minimum Set-Aside, including Average Income is identified on the **Unit Details form** in the Workbook.

Extended Use Agreement (EUA)

The EUA identifies the specific requirements the taxpayer (owner) project must meet and aligns with the QAP, the Workbook, and the IRS form 8609. The EUA also lists the project's 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 Virginia Housing

Virginia Housing issues Part I of the IRS 8609 form to the taxpayer (owner) with the Housing Credit allocation amount the project allocation date and Placed in Service Date for each building.

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 Virginia Housing Compliance Officer assigned to the project.

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 Virginia Housing.

Low-Income Housing Tax Credit Compliance - "Understanding Average Income" Playlist

<https://www.vhda.com/BusinessPartners/PropertyOwnersManagers/LIHTCCompliance/Pages/LIHTCCompliance.aspx#.XbiqLaqWzIU>