



# Income Averaging A New Minimum Set-Aside Election

**April 16, 2019**

**Working Together Conference**

# Agenda

- Income average, the new minimum set-aside (MSA)
- Eligibility
- Minnesota Housing's Implementation Guidance
- Compliance considerations

# Income Average MSA

## (C) AVERAGE INCOME TEST.—

- (i) IN GENERAL.—The project meets the minimum requirements of this subparagraph if 40 percent or more (25 percent or more in the case of a project described in section 142(d)(6)) of the residential units in such project are both rent-restricted and occupied by individuals whose income does not exceed the imputed income limitation designated by the taxpayer with respect to the respective unit.
- (ii) SPECIAL RULES RELATING TO INCOME LIMITATION.—For purposes of clause (i)—
  - (I) DESIGNATION.—The taxpayer shall designate the imputed income limitation of each unit taken into account under such clause.
  - (II) AVERAGE TEST.—The average of the imputed income limitations designated under subclause (I) shall not exceed 60 percent of area median gross income.
  - (III) 10-PERCENT INCREMENTS.—The designated imputed income limitation of any unit under subclause (I) shall be 20 percent, 30 percent, 40 percent, 50 percent, 60 percent, 70 percent, or 80 percent of area median gross income.

# Eligible Projects

- Income Averaging Guidance
- Eligibility
  - Minnesota Housing
    - Projects are eligible to select income averaging provided they have not filed Part 2 of Form 8609 with the IRS.
  - Suballocators – Minneapolis, St. Paul, Dakota County, Washington County

- Applicability
  - New Applications
  - Previously Selected Projects
    - HTC only
    - HTC with Minnesota Housing deferred financing
      - For 2018 RFP/2019 HTC Round 1 HTC going forward
      - 2017 RFP/2018 HTC, 2018 Round 2 and previously selected projects

# Requirements

- General Requirements
- Supporting Documentation
  - Syndicator/Investor letter of approval
  - Permanent lender(s) letter of approval
  - Bond issuer letter of approval
  - Income Averaging Election/Certification Form
  - Income and Rent Grid Form
  - Updated Multifamily Workbook (if applicable)

- Submission Process

- Notification

- Email [tamara.wilson@state.mn.us](mailto:tamara.wilson@state.mn.us) to indicate that you will submit the required materials via the Portal for eligible projects or to submit via [box.com](https://www.box.com) for projects that do not have a Portal account.

- Stage of the Development

- [Box.com](https://www.box.com) or Multifamily Customer Portal



# Compliance Considerations



# Minimum set-aside vs. Applicable Fraction

- Minimum set-aside– project rule (form 8609, line 8b)
  - Minimum requirement to qualify for any tax credits
  - Calculated on a unit fraction, only
- Applicable fraction – building rule
  - Ratio of low income units to the total number of residential units in the building
  - Lesser of floor space or unit fraction
  - Units for FT Manager, Maintenance, Office, etc., not included in numerator or denominator (see [IRS Revenue Ruling 92-61](#))

# Minimum set-aside

- Owner elects to treat all buildings as one project
  - IA MSA must be met across all buildings

Project #1



# Minimum set-aside

- Owner elects to treat buildings as separate projects, or certain buildings as projects
  - IA MSA must be met for each project

Project #1



Project #2



Project #3



# Designating units

- To qualify as a low-income unit under Section 42(i)(3),
  - (1) a unit must be occupied by an income-qualified household;
  - (2) the rent must be restricted; and
  - (3) the unit must be suitable for occupancy.

# Income Average Test

Enter the total number of units in project								Minimum number of units for MSA	
10			4						
For each bedroom size, enter the number of units by bedroom size that were income and rent restricted at each respective MTSP at the end of the taxable year									
Studio	1BR	2BR	3BR	4BR	5BR	6BR	Total	MTSP	Average
							0	20%	
							0	30%	
							0	40%	
	2	1	2				5	50%	
							0	60%	
	1	2	2				5	70%	
							0	80%	
0	3	3	4	0	0	0	10		60.00%

# Addressing Noncompliance

## Income Average Test

Enter the total number of units in project						Minimum number of units for MSA	
10						4	
For each MTSP percentage, enter the number of units by bedroom size that were income and rent restricted at the end of the report year							
Studio	1BR	2BR	3BR	4BR	Total	MTSP	Average
					0	20%	
					0	30%	
					0	40%	
		2	1	2 fail!	3	50%	
					0	60%	
		1	2	2	5	70%	
					0	80%	
0	3	3	2	0	8		62.50%

# Noncompliance

## Income Average Test

Enter the total number of units in project						Minimum number of units for MSA	
10						4	
For each MTSP percentage, enter the number of units by bedroom size that were income and rent restricted at the end of the report year							
Studio	1BR	2BR	3BR	4BR	Total	MTSP	Average
					0	20%	
					0	30%	
					0	40%	
		2	1	2 fail!	3	50%	
					0	60%	
		1	2 Lost??		2	70%	
					0	80%	
0	3	1	2	0	6		60.00%

# Available Unit Rule

(iii) Rental of next available unit in case of average income test

In the case of a project with respect to which the taxpayer elects the requirements of subparagraph (C) of paragraph (1), if the income of the occupants of the unit increases above 140 percent of the greater of

(I) 60 percent of area median gross income, or

(II) the imputed income limitation designated with respect to the unit under paragraph (1)(C)(ii)(I), in the case of any other unit



# AUR continued

- (I) the imputed income limitation designated with respect to such unit under paragraph (1)(C)(ii)(I), in the case of a unit which was taken into account as a low-income unit prior to becoming vacant, and
- (II) the imputed income limitation which would have to be designated with respect to such unit under such paragraph in order for the project to continue to meet the requirements of paragraph (1)(C)(ii)(II), in the case of any other unit.

# Interactions with Other Programs

- IA is not an allowable Minimum Set-aside for Tax Exempt Bonds
- 30% MTSP are not the same as ELI
- MTSP's have Hold Harmless rule

# QUESTIONS??



# Resources

- [Consolidated Appropriations Act, 2019 \(Sec. 102\)](#)
- [MN Housing Income Averaging Guidance](#)
- Income and rent limit [webpage](#)

# For More Information

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