



## Income Averaging Policy

The Consolidated Appropriations Act of 2018 (the Act) permanently established income averaging as a third minimum set-aside election.

### A. The following are federal statutory requirements:

1. Under Internal Revenue Code (IRC) Section 42(g)(1)(C)(ii)(I) owners designate the income and rent limitation of each unit. These designations must average 60%; owners do not need to maintain an average among tenant household incomes.
2. The designated levels may be only 20%, 30%, 40%, 50%, 60%, 70%, and/or 80% of AMI.
3. The election is irrevocable once made on Form 8609.
4. Under IRC § 42(g)(1)(C)(i) a property is qualified when 40% or more of the total units:
  - are rent restricted to and
  - occupied byhouseholds at or below the limitation designated with respect to the unit.
5. IRC § 42(g)(2)(D)(iii) contains a distinct Next Available Unit Rule (NAUR) for income averaging. Owners should consult with compliance experts on how it will work with market rate units.
6. The 30% AMI level under the Housing Credit is not the same as the Extremely Low-Income (ELI) restriction under the National Housing Trust Fund. Owners of properties with both sources should be mindful of the difference.

### B. DCA adopted requirements and interpretations:

1. Developments either awarded before 2018 (including tax exempt bonds awarded under the 2017 QAP) or with a 2018 DCA HOME commitment are ineligible.
2. Resyndication of properties with a recorded Housing Credit Land Use Restricted Covenant (LURC) is ineligible. DCA will consider waiver requests so long as any unit to be designated as 70% or 80% AMI is currently market rate or will be newly constructed. Housing Credit units covered by the existing LURC must have designations of 60% AMI or lower.
3. Applicants will designate units at a specific AMI by unit type (e.g., 10 one-bedroom units at 50%) at the time of application or request to change elections.
4. Income limits must be equally distributed among bedroom sizes (other than a single unit per AMI limit if necessary due to odd numbers). DCA will consider exceptions to this requirement when necessary to:
  - reduce relocation impact in occupied rehab properties,
  - comply with the requirements of federal project-based assistance, and
  - facilitate HUD 811 units or other forms of supportive housing.
5. Owners will need DCA approval (using the Project Concept Change process) to change designations prior to the property reaching full occupancy.
6. The recorded LURC will contain a general provision regarding the election but will not list unit designation specifics.



7. Owners of developments with more than one building will indicate on the Form(s) 8609 to treat all of them as part of a multiple building project (checking “Yes” on line 8b).
8. DCA will monitor properties’ compliance at least annually. The monitoring fee is \$1,000 per unit.
9. Leasing to an over-income household or exceeding the maximum housing expense does not automatically increase a unit’s percent designation.
10. Absent IRS guidance to the contrary, DCA will not report a property as failing the income averaging minimum set-aside so long as 40% of the total units comply with whatever are the designations for each.
11. Properties with market rate units and income averaging are subject to additional requirements for both property management staff education and third-party reporting. Such properties must have written policies and procedures addressing changes in income at recertification.
12. The NAUR operates the same as with the original set-asides when all units are Credit qualified (owners lease each according to its AMI level). However, if
  - a property has market rate units, one or more of which become vacant, and
  - multiple households in Credit units are over the applicable 140% limit,
 the owner must rent the next available unit according to the lowest percent designation among the units with over-income households.

**C. Requests to change set-aside must include the following:**

1. An updated DCA Core Application reflecting all designations/changes.
2. A matrix showing the AMI percentage(s) for each designated unit type.
3. A legal opinion stating income averaging will be compatible with the requirements of all other anticipated funding sources (excluding market-rate loans) and project-based operating assistance (if applicable).
4. A statement from permanent lenders and the equity provider acknowledging income averaging.
5. A new or revised market study showing adequate demand for all possible combinations of unit sizes and percent limits.
6. Statement committing to annual income averaging training for on-site property managers.

**D. 9% Credit Applications**

Income averaging will not be available for 2018 applications at the time of the competitive round. If awarded, applicants may request a change in the set aside through the DCA Project Concept Change process (accompanied by all required documents) on or before May 1, 2019.

1. Applicants with 2018 awards may not offset “deeper targeted” units claimed for points under Appendix II, section II(A) of the 2018 Qualified Allocation Plan.
2. The 70% and 80% designated rents do not need to meet the 2018 QAP requirement of being at least 10% less than market rents.

**E. 4% Tax Exempt Bonds/4% Credit Applications**

The Act did not change IRC Section 142, which includes multifamily Housing Bonds. However, these properties may satisfy both income averaging and one of the elections applicable to tax-exempt financing (20 at 50 or 40 at 60).

***DCA MAY AMEND THIS POLICY OR MAKE EXCEPTIONS AS NECESSARY.***

