

**NEW HAMPSHIRE HOUSING FINANCE AUTHORITY
AVERAGE INCOME TEST POLICY**

December 6, 2018

Part 1 Background

The Consolidated Appropriations Act of 2018 permanently establishes an average income minimum set-aside for Low Income Housing Tax Credit (LIHTC) projects. This set-aside is commonly referred to as the Average Income Test (AIT). Projects meet this minimum set-aside if the LIHTC units are both rent-restricted and occupied by households whose incomes do not exceed the imputed income limitation designated by the owner. The average of the imputed income limitations designated under this set-aside shall not exceed 60% of area median income (AMI). The designated imputed income limits permitted are: 20%, 30%, 40%, 50%, 60% 70%, and 80% of AMI.

Owners that consider the AIT should be aware of potential compliance risks associated with the election of the AIT. Once an election of the minimum set-aside is made by the owner on IRS form 8609, it is irrevocable and must be maintained for the duration of the 15-year compliance period and the extended use period. Noncompliance with the minimum set-aside during the compliance period will result in a loss of tax credits. If a project fails to meet the first year minimum set-aside requirement at the close of the first taxable year of the credit period, the noncompliance cannot be corrected and the owner is prohibited from ever claiming the credit awarded under the current allocation.

Part 2 General Guidelines and Requirements

2.01 Eligible Projects

- A. Projects applying for either 9% or 4% LIHTCs will be permitted to elect the AIT minimum set-aside.
- B. Projects with a recorded Land Use Restriction Agreement (“LURA”) will not be permitted to elect the AIT minimum set-aside even if the IRS form 8609 has not yet been issued by New Hampshire Housing Finance Authority (the “Authority”), except in the case of a re-syndication as provided for in paragraph 2.02 C.
- C. The minimum set-aside election on form 8609 is irrevocable, therefore projects that have been issued an 8609 will not be permitted to change the minimum set-aside election to AIT.

2.02 Requirements for Income Averaging

- A. Income averaging will be limited to projects that reserve 100% of the total units to LIHTC affordability.
- B. Owners will be required to treat multi-building projects as one project (owners must check “yes” on line 8b of IRS Form 8609 and attach the required statement as outlined on the form’s instructions).
- C. The project can not involve a re-syndication of a property previously developed or preserved using LIHTC that is subject to an existing LURA, if the proposed AIT would conflict with the existing LURA minimum set-aside requirements. In general, a re-syndication application will only qualify if the project has completed its extended use period, or fewer than 100% of the units in the project were LIHTC units and only the non-LIHTC units are proposed to be designated as over-60% AMI units.

- D. Projects will be permitted to float the units within the project but the number of units within each imputed income designation must remain the same. The unit designations will be outlined in Exhibit B, Special Conditions, of the LIHTC LURA. The number of income designations an owner may choose for a project is limited to four income bands.
- E. Unit designations shall be distributed substantially equally among bedroom sizes and throughout the project for the life of the project, with such distribution to be at the satisfaction of the Authority. As always, the owner must comply with Fair Housing laws. Owners may want to consult with an attorney experienced in Fair Housing law to ensure compliance with applicable laws.
- F. Owners should be aware of compliance requirements for overlapping programs, including, but not limited to, the federal Housing Trust Fund, tax-exempt bonds, HOME Investment Partnerships Program, and the Section 8 programs. The minimum set-aside options for tax-exempt bond financing have not changed. Additionally, the 30% AMI income and rent levels for the LIHTC program (including AIT) are not the same as the extremely low income rent and income restrictions under the federal Housing Trust Fund and Section 8 programs.
- G. Owners electing the AIT will be required to complete an annual recertification for each household in accordance with New Hampshire Housing's [Tenant Certification Requirements](#).
- H. The one-time monitoring fee will be increased from \$600 per unit to \$1,000 per unit for any project that elects the AIT. The Authority reserves the right to adjust the monitoring fee based on actual experience as the AIT is implemented.
- I. If a project fails to meet the AIT, the noncompliance will be reported on IRS form 8823.
- J. The Authority's LIHTC *Compliance Monitoring Requirements*, which can be found on the website at <https://www.nhhfa.org/asset-management-compliance>, are subject to change to include additional requirements as a result of AIT.

2.03 Required Documentation

- A. Owners will be required to indicate the set-aside selection and proposed imputed income designations on their application.
- B. A market study supporting the imputed income designations being proposed is required.
- C. Owners will be required to provide (concurrent with submission of progress phase requirements or prior to loan closing, whichever is sooner) written notice from the project syndicator/investor, the management company, and all funders (including construction lender and permanent loan lender) acknowledging the owner's election of AIT.
- D. At the time of application for LIHTCs, owners must provide written acknowledgement to NHHFA that subsequent IRS guidance may result in changes to this policy. The acknowledgement form can be found on the Authority's website at <https://www.nhhfa.org/low-income-housing-tax-credits>.

2.04 Liability

- A. Compliance with the requirements of Section 42 of the Internal Revenue Code is the responsibility of the owner of the qualified low-income building for which the credit is allowable. The Authority's obligation to monitor for compliance with the requirements of Section 42 of the Code does not make the Authority liable for an owner's noncompliance.

This policy is subject to change at the sole discretion of New Hampshire Housing.