

- I. Income Averaging is available to developments making their minimum set-aside election after March 23, 2018.
 - a. **Any change in set-aside election should be allowed up to and including when 8609s are submitted to IRS.**
 - b. Additional Comment from OCAH Member:

My understanding is that the owner can make the election at any time as long as prior to placed in service. I'm not sure going as far out as 8609 will be allowed under the code since the deal is already placed in service and in lease-up. If 8609 isn't issued for 6 months, I don't think could go back and make the election.

OHFA: This is a misunderstanding. Income Averaging is available to any development making their minimum set-aside election on Form 8609 after March 23, 2018.

- II. OHFA will not permit developments that are less than 100% Low Income units to utilize the income averaging option.
 - a. **The set-aside election should not be restricted to only those Developments with 100% Low Income Units, but available to all Developments. Though income averaging might present some unique compliance opportunities, this should not exclude those properties from benefiting from the new set-aside. If this restriction remains, then the definition of Low Income would possibly need to be modified as 70-80% would not meet the definition.**
 - b. Additional Comment from OCAH Member:

Mike Novogradac made a comment at NCSHA that the "intent" is for 100% properties, however, an owner would only have to meet the income averaging on 40% of the units and the other 60% would be restricted to up to 60% AMI. Everyone did a double take when Mike said that so I'm not sure if that is what Treasury will say or not. I'm not sure how you would do income averaging on a project if it wasn't 100% unless they were allowed to take market rate units out of the calculation like you currently do. This is where Treasury really needs to issue guidance because we're all guessing at this time.

OHFA: We have addressed this by allowing mixed-income developments. Although OHFA has allowed it, the IRS could disallow it later. Guidance from Treasury would be helpful, but we don't know if or when that might come.

- III. Any property seeking 9% or 4% credits for re-syndication of previously awarded tax credit properties will not be eligible to select the income averaging set aside. A new election would not free the continuing low-income units of their obligations under the prior extended use agreement, so the owner would, in effect, have to comply with the more stringent rules applicable to each particular unit if it were to change its election upon re-syndication. Given the complexity of complying with two separate minimum set-aside rules, OHFA has decided not to allow income averaging for such re-syndications.

- a. **The new set-aside should be allowed on re-syndications. OHFA does not require re-syndications to keep to the old requirements. In fact, language in the LURA specifically states the new requirements, including the set-aside election, supersedes the old LURA. The possibility of three set-asides provides the most flexibility with re-syndications. Also, a prohibition on re-syndications would prohibit older Developments with only a fifteen-year LURA that has expired from electing the new set-aside.**

OHFA: No. This would open the door for past developments if they are able to re-syndicate. We believe this would violate the spirit and intent of the new law.

- IV. Additional education requirements for property management staff will be required.
Statement committing to annual income averaging training for on-site property managers.

- a. **Annual training for on-site managers seems excessive in both frequency and breadth. Annual training on the existing set-asides is not required. Also, any training should be designated for the management company, not on-site managers. The company would be responsible for training own staff. If training is kept as a requirement, OHFA must clarify what kind of training will be acceptable.**

OHFA: There will need to be additional education requirements of some sort for both property management staff and on-site property managers. However, we do agree that annual training is rather excessive.

- V. Owners who select the Income Averaging election on IRS Form 8609 will be required to complete full recertification of all households annually. Developments that are comprised of 100% Low Income units, including 70% and 80% units, will not be required to complete annual re-certifications. This policy could change if the IRS decides to require annual re-certifications.

- a. **100% recertification seems excessive and unnecessary.**

b. Additional Comment from OCAH Member:

This section seems confusing because the first sentence says all households annually but the second sentence says 100%, including 70%/80% units will not be required to complete recerts. The only way you'll get 70%/80% units in a 100% project is Income Averaging. To me, this section contradicts itself. I think OHFA needs to clarify what they mean.

OHFA: We have addressed this; only mixed-income developments must re-certify. However, The IRS requires annual re-certifications for those developments with market rate units.

- VI. An updated OHFA Application Form reflecting all designations/changes
- a. **If the change request is at Carryover or Final, then a separate Application is not necessary.**

OHFA: This is necessary because it will require OHFA staff to re-underwrite the project.

- VII. A legal opinion stating that the income averaging set aside will be compatible with the requirements of all other anticipated funding sources.
- a. **Requiring a legal opinion is unnecessary and an extra cost burden to affordable housing as part of the request to change a set-aside. No legal opinions are required at any other time to ensure compliance with all funding sources. It is up to the Owner to verify all funding requirements are satisfied.**

OHFA: After further review, we agree that a legal opinion is unnecessary

- VIII. OHFA will amend the Chapter 36 Rules to increase the credit monitoring fee for properties electing the income averaging option.
- a. **The increase in compliance fee should be reasonable, as these are still affordable housing Developments.**

OHFA: We agree, and will set the fees accordingly.

- IX. A matrix showing the AMI percentage(s) for each designated unit type.
- a. **A matrix showing AMI designations is the same as the UD&R in the application, so it is unnecessary as part of the request.**

OHFA: We respectfully disagree; it would be different for different income designations.

- X. Applications must consider relocation impact in setting percentages for occupied rehab properties.

- a. **Clarify the need for a relocation plan with the new set-aside request.**

- b. Additional Comments from Member:

I agree with the comments to the OHFA draft income averaging policy. Primarily, it was meant to offer flexibility so let's keep it as flexible as possible. Secondly, since the Act allows income averaging for a property offering at least 40% of the units as affordable, OHFA should respect that as their minimum as well.

OHFA: As with any occupied rehab property, we believe that a relocation plan will aid the developer in determining which income designations to choose.