

State Average Income Test Policies

Disclaimer: The below links reflect Average Income Test policies state allocating agencies have shared with NCSHA as of October 30, 2019. There may be additional states that have published policies since that date of which NCSHA is unaware. In addition, it is possible that state allocating agencies may revise their policies and not send NCSHA the revisions; therefore, we do not guarantee that the policies below are the most recent version. Please contact the appropriate state allocating agency with specific questions about their Average Income Test policies. NCSHA will continue to update this document as we receive Average Income Test policies from allocating agencies.

Alabama: Alabama Housing Finance Authority is waiting for further IRS guidance before implementing Average Income Test policies.

Arizona: The Arizona Department of Housing [published Average Income Test guidance](#) in their information bulletin.

California: The California Tax Credit Allocation Committee has approved changes associated with Average Income Test to its [Code of Regulations](#), effective May 16, 2018. The relevant sections are Section 10325(f)(13) on page 64 and 10326(g)(9) on page 73.

Connecticut: The Connecticut Housing Finance Authority has issued [Guidelines](#) for Utilizing the Average Income Test Minimum Set-Aside for Applications Under Consideration or Already Approved.

Colorado: The Colorado Housing and Finance Authority has [published their](#) Average Income Test policy as of August 1, 2019.

Florida: The Florida Housing Finance Corporation issued [draft policy](#) on Average Income Test.

Georgia: The Georgia Department of Community Affairs/Georgia Housing Finance Agencies published [their Average Income Test policy](#).

Idaho: Idaho Housing and Finance Association has shared their Average Income Test policies for its 2019 QAP:

The Average Income Test election in Idaho is available for only 100% affordable tax exempt bond financed developments.

In targeting specific AMI levels, reasonable parity between different bedroom sizes and unit types at each targeted income/rent level must be offered at the development. Units must be disbursed in a manner that does not violate Fair Housing.

The market study submitted with the request for housing credits must reflect adequate rental demand for the proposed AMI levels and unit types.

THIS POLICY IS SUBJECT TO CHANGE IN THE EVENT THE IRS ISSUES FURTHER GUIDANCE ON AVERAGE INCOME TEST. Housing sponsors should consult their own tax, legal, and accounting advisors before electing this option and be aware of potential risks associated with electing Average Income Test. Housing sponsors are solely responsible for satisfying the requirements of Section 42 and Section 142 of the Internal Revenue Code and should seek advice from appropriate legal and tax professionals to ensure a successful development. The above mentioned criteria is based on general public information and may be incomplete. The Association will not be held responsible for Average Income Test elected by the sponsor or developer.

Illinois: The Illinois Housing Development Authority has included Average Income Test in the proposed [2020-2021 QAP](#).

Indiana: The Indiana Housing and Community Development Authority has published Average Income Test policies for its [9 percent program](#) and its [4 percent program](#).

Iowa: The Iowa Finance Authority has published their [2019 4% and 9% QAPs](#), which include the new Average Income Test guidance.

Kentucky: The Kentucky Housing Corporation issued its Average Income Test policy.

Overview:

The Consolidated Appropriations Act of 2018 (the Act) permanently established Average Income Test as a third set-aside election for new Housing Credit developments. This new Average Income Test set-aside allows Credit-qualified units to serve households earning as much as 80% of the Area Median Income (AMI), if the average imputed income limit of the property is 60% or less of AMI. Higher rents paid by households with incomes above 60% AMI will have the potential to offset the lower rents for households living in units designated at lower income levels. Average Income Test preserves rigorous targeting to low-income households, while providing greater income mixing potential.

The requirements listed below are subject to change.

Compliance Monitoring Requirements:

1. Income and rent designations are required to float to maintain compliance with minimum set-asides specified in the application. The average income for the property cannot exceed 60%.
2. Owners electing Average Income Test must commit to having at least 40% of the units in the property affordable to eligible tenants.
3. Average Income Test applies to the designated income/rent levels of the units, not the incomes of individual tenant households.
4. Average Income Test applies to both income and rent limits. If a unit has a designated limit of 80% of AMI, the maximum rent level that may be charged to a household in that unit is 30% of 80% AMI. Similarly, if a unit has a designated a limit of 30% AMI, the maximum rent level that may be charged to a household in that unit is 30% of 30% AMI.
5. Owners must distribute 20%, 30% 40%, 50%, 60% 70% and 80% units across the various unit types and sizes in a manner that does not violate Fair Housing Law.
6. The 30% AMI income and rent level under the Housing Credit program, for purposes of Average Income Test, is not the same as the Extremely Low-Income and rent restrictions under the National Housing Trust Fund (NHTF) statutes and regulations. Whereas NHTF statutes and regulations define "Extremely Low-Income" as the greater of 30% of AMI or the federal poverty line for applicable household size, the Average Income Test unit designation under the Housing Credit program is based solely on AMI. Properties that have layered National Housing Trust Fund with Credits should be mindful of this difference.
7. The next available unit rule provides that a unit is over income if the occupant's income exceeds 140% of the greater of 60% AMI or the designated limit applicable to the unit. This requires that the next available unit of comparable or smaller size be rented (A) to a tenant whose income does not exceed the designated limit applicable to a vacant, previously-designated unit, or (B) to a tenant at an income level that would not cause a violation of the minimum set aside requirements for all other units.
8. Households will be required to complete a full recertification within 120 days of the anniversary date of the initial certification (move-in date) to confirm the appropriate unit set-aside. At this time, KHC is only requiring the one full certification. No certification exception is allowed for 100% low income projects using average income as the minimum set-aside. If household income has increased to the next set-aside limit, the next available unit of comparable or smaller size must be rented to a household at the lower set-aside limit until the appropriate unit mix is restored. If household income decreases, it is acceptable to move the unit to the lower set-aside limit if a slot is available, but this is not mandatory.
9. Lower set-asides must follow the Multifamily Tax Subsidy Program (MTSP) income and rent limits as published by HUD annually. These limits can be accessed through the Novogradac website or the KHC website. Any units where income or rent exceeds the limit for the set-aside specified on the low-income certification will be reported to the IRS

as non-compliant.

10. As part of the annual review of the Annual Owner Certification, KHC will test compliance with the Average Income Test requirements. Units out of compliance at year end, regardless of whether attributable to a low-income certification issue or a physical inspection issue, will be removed from the applicable fraction to determine whether the Average Income is acceptable and meets program requirements. If the minimum number of compliant units falls below 40%, or if the average income designation of compliant units is above 60% AMI, the entire project will fail to meet the required minimum set-aside and will be reported to the IRS as non-compliant.

11. Monitoring Fees will be charged at a rate of \$TBD per unit should an owner elect Average Income Test as the minimum set aside.

12. Additional education requirements for property management staff may be required for developments electing Average Income Test.

13. Basic noncompliance will be handled in the same manner as other minimum set-asides. If a development elects Average Income Test and fails to meet the Average Income Test standard at the end of a year, it will not be considered a qualified low-income housing development for the year under IRC Section 42(g)(1)(C). This noncompliance will be reported on IRS Form 8823 and the owner could be subject to a loss of Credits.

Please note: The IRS makes the ultimate determination if a development is in compliance with Average Income Test or any other elections made by the owner. Acceptance by KHC does not guarantee acceptance by the IRS. Owners should consult with their legal counsel. This policy is subject to change.

Louisiana: Louisiana Housing Corporation has included the following language in their QAP regarding Average Income Test:

Average income test: A taxpayer may elect to apply the average income test if at least 40 percent of the units in the project are both rent restricted and occupied by individuals whose income does not exceed the imputed income limitation designated by the taxpayer for the respective unit. The taxpayer must designate an imputed income limitation percentage of 20%, 30%, 40%, 50%, 60%, 70% or 80% to such designated units provided that the average of the imputed income limitation of the respective designated units may not exceed 60% of the area median gross income. The applicable fraction of such projects must be 100%. Projects consisting of multiple residential buildings must answer "Yes" to question 8b on IRS Form 8609, thereby designating the development as a multiple building project.

Maryland: The Maryland Department of Housing and Community Development has included their [Average Income Test policy in their 2019 QAP](#).

Michigan: The Michigan State Housing Development Authority has published a [memorandum](#) on their new Average Income Test policies.

Minnesota: Minnesota Housing produced a [document](#) to clarify the current applicability of Average Income Test by the development stage of the project.

Missouri: The Missouri Housing Development Commission has published language regarding their Average Income Test policy in their [finalized 2019 QAP](#).

New Hampshire: The New Hampshire Housing Finance Authority has published their [Average Income Test policies](#).

New Mexico: New Mexico Mortgage Finance Authority has published Average Income Test guidance in their [2019 QAP](#).

New York: The New York State Homes and Community Renewal has published their [Average Income Test guidance](#).

North Dakota: The North Dakota Housing Finance Agency has released its [Average Income Test policies](#) and has updated its 2019 QAP to reflect the Average Income Test option for the upcoming application round.

North Carolina: The North Carolina Housing Finance Agency has included their Average Income Test guidelines into their [2019 QAP](#).

Ohio: The Ohio Housing Finance Agency has published [draft QAP technical revisions](#) for 2019 that include Average Income Test. The relevant section begins on page 37.

Oklahoma: The Oklahoma Housing Finance Agency issued their Average Income Test policy in their 2020 QAP:

Overview

The Consolidated Appropriations Act of 2018 (the Act) permanently established Average Income Test as a third minimum set-aside election for new Housing Credit developments. This new Average Income Test set-aside allows Credit-qualified units to serve households earning as much as 80 percent of Area Median Income (AMI), as long as the average imputed income limit of the property is 60 percent or less of AMI. Higher rents that households with incomes above 60 percent of AMI pay will have the potential to offset the lower rents for households living in units designated at lower income levels. Average Income Test preserves rigorous targeting to low-income households, while providing more and greater income-mixing potential.

The following are general statutory requirements for this new option:

- Owners electing Average Income Test must commit to having at least 40 percent of the units

in the property affordable to eligible tenants.

- Average Income Test applies to the designated income/rent levels of the units, not the incomes of individual tenant households.
- Under Average Income Test, designated income/rent levels may only be set at 10 percent increments beginning at 20 percent of AMI. The allowable income/rent designation levels are 20 percent of AMI, 30 percent of AMI, 40 percent of AMI, 50 percent of AMI, 60 percent of AMI, 70 percent of AMI, and 80 percent of AMI.
- Average Income Test applies to both income and rent limits. If a unit has a designated limit of 80 percent of AMI, the maximum rent level that may be charged to a household in that unit is 30 percent of 80 percent of AMI. Similarly, if a unit has a designated limit of 30 percent of AMI, the maximum rent level that may be charged to a household in that unit is 30 percent of 30 percent of AMI.
- The minimum set-aside election is irrevocable once made on Form 8609. Therefore, existing developments already placed in service are not eligible to change their minimum set-aside/income election to Average Income Test.
- The next available unit rule, as modified by the new language, (i) provides that a unit is over income if the occupant's income exceeds 140 percent of the greater of 60 percent of AMI or the designated limit applicable to the unit and (ii) effectively requires that the next available unit of comparable or smaller size be rented (A) to a tenant whose income does not exceed the designated limit applicable to the new unit, if it was previously a low-income unit or (B) to a tenant at an income level that would not cause a violation of the 60 percent average, if the new unit had not previously been a low-income unit. Owners should consult with compliance experts in evaluating how Average Income Test will work in developments with market rate units.
- The 30 percent of AMI income and rent level under the Housing Credit for purposes of Average Income Test is not the same as the Extremely Low-Income and rent restriction under the National Housing Trust Fund. The Housing Trust Fund statute and regulation define "Extremely Low-Income" as the greater of 30 percent of AMI or the federal poverty line for applicable household size. Average Income Test unit designation is based solely on AMI. Properties that have layered National Housing Trust fund with credits should be mindful of this difference.
- Basic noncompliance will work the same as it does with the other minimum set-asides. If a development elects Average Income Test and fails to meet the Average Income Test standard at the end of a year, it is not a qualified low-income housing development for the year under IRC Section 42(g)(1)(C), and this noncompliance must be reported to IRS Form 8823 and the owner could be subject to a loss of Credits. Presumably the IRS will revise the Form 8823 and its instructions accordingly.

OHFA Adopted Requirements for Average Income Test:

- Owners of developments with more than one building must elect on the Forms 8609 to treat all of them as part of a multiple building project (checking "Yes" on line 8b of the current form).

- OHFA will amend the Chapter 36 Rules to increase the credit monitoring fee for properties electing the Average Income Test option.
- Additional education requirements for property management staff will be required.
- Income designations are permitted to “float”. For example, if at the time of Application the Owner committed to a mix of 30%, 50%, 60% and 80% units with an overall income percentage of 60%, then throughout the affordability period (as long as the overall income percentages remains at or below 60%) the unit designations may be changed to any combination of 20%, 30%, 40%, 50%, 60%, 70% and 80% units.
- Developments that are not comprised of 100% Low Income units, i.e. those including market rate units will not be eligible to use Average Income Test as their minimum set-aside election.
- 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.
- Owners must disperse 20%, 30%, 40%, 50%, 60%, 70% and 80% units across unit types and sizes in a manner that does not violate Fair Housing.
- OHFA reserves the right to disallow any clear skewing of unit designations. OHFA will require applicants to provide reasonable parity between different bedroom sizes at each targeted income band utilized on the property.

Tax Exempt Bonds/4% Credit Applications

The Act modifies IRC Section 42 to allow for Average Income Test, but does not make a similar change in IRC Section 142, which covers exempt facility bonds, including multifamily Housing Bonds. However, Average Income Test may be used in bond-financed Housing Credit developments so long as the development satisfies both the Average Income Test minimum set-aside election and one of the minimum set-aside elections applicable to tax-exempt bond financing (20/50 or 40/60 minimum set-aside). Thus, units with income limits above 60 percent or 50 percent, as applicable, do not count for purposes of bond compliance.

Rehabilitation Properties

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

Re-syndication Applications

Any property seeking 9% or 4% credits for re-syndication of previously awarded tax credit properties will not be eligible to select the Average Income Test 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 Average Income Test for such re-syndications.

PLEASE NOTE: THE IRS MAKES THE ULTIMATE DETERMINATION REGARDING WHETHER OR NOT A DEVELOPMENT IS IN COMPLIANCE WITH THIS AND/OR ANY

OTHER ELECTIONS MADE BY THE OWNER. ACCEPTANCE BY OHFA DOES NOT GUARANTEE ACCEPTANCE BY THE IRS. OWNERS SHOULD CONSULT WITH THEIR LEGAL COUNSEL. THIS POLICY IS SUBJECT TO CHANGE IN THE EVENT THE IRS ISSUES GUIDANCE ON AVERAGE INCOME TEST.

Pennsylvania: The Pennsylvania Housing Finance Agency has incorporated Average Income Test policies into its [2019-2020 QAP on page 19](#).

Rhode Island: Rhode Island Housing published their [Average Income Test guidance](#) on July 9, 2018.

Tennessee: Tennessee Housing Development Agency published their [Average Income Test policies](#) as of May 22, 2019.

Texas: The Texas Department of Housing and Community Affairs has issued [draft income averaging provisions](#), which is highlighted in their proposed compliance rules.

Utah: The Utah Housing Corporation published their [Average Income Test policy](#) on August 19, 2019.

Virginia: The Virginia Housing Development Authority has included their [Average Income Test policy in their 2019-2020 QAP](#). Additionally, they have developed an [average income memorandum](#).

Washington: The Washington State Housing Finance Commission has sent out via email to its development and management community the following guidance on Average Income Test.

Dear multifamily developers and managers,

As many of you know, in addition to the 12.5% increase in the Low-Income Housing Tax Credit, Congress's passage of the Consolidated Appropriations Act of 2018 permanently establishes Average Income Test as an option for LIHTC properties. These properties can now include units serving up to 80% AMI, as long as the average income/rent limit for the property is no more than 60% of AMI.

We are excited to start implementing this new tool. Last Thursday (April 26), the Housing Finance Commission approved our recommendation to move forward according to several criteria. We want to share these criteria and additional guidance with you.

Note: With no guidance yet from the IRS, housing finance agencies are relying on the interpretations of partners such as NCSHA and Novogradac. You can read [NCSHA's income-averaging Q&A](#) here, and see also [Novogradac's piece on Average Income Test](#).

WSHFC Guidance

Timeline and eligibility:

- Only projects that have not yet signed a regulatory agreement and have not placed in service can choose Average Income Test.
- We are not changing our application process for the June 2018 9% LIHTC competition. We do not expect June projects to be structured with Average Income Test, and no points will be awarded for using this option.
- Rather, we will develop new policies that reflect income-averaging options to take effect with the January round.

Criteria:

In the interim before new policies are developed, we will approve Average Income Test on a case-by-case basis. Developers who would like to choose Average Income Test for a project **must take the following steps**. **Also note:** Average Income Test must not create any material change to the points or structure of the project per its application or allocation.

- Submit a plan and unit configuration, using the attached or linked spreadsheet created by Novogradac, showing that the unit configuration meets the Average Income Test and/or bond regulatory agreement;
- Get written agreement from the investor and any other public or private funders;
- Complete a market study update, if necessary (depends on the circumstance);
- Commit and agree in writing to the compliance implications, as we understand them. A protocol for this commitment is forthcoming.

West Virginia: West Virginia Housing Development Fund's current policy as contained in the 2019 and 2020 Tax Credit Manual:

Currently, the Fund has decided to not implement the "income-averaging" provision of the Consolidated Appropriations Act of 2018 based upon a desire to delay implementation until further guidance is provided by the IRS. If this determination changes, and the Fund decides to implement the "income-averaging" provision, prior to the start of the 2020 application rounds, the Fund will provide an update on the Fund website (www.wvhdf.com), will email information to the Fund LIHTCP mailing list, and provide updated application forms which will accommodate the new provision.

Wyoming: Wyoming Community Development Authority has included [Average Income Test policies in their 2020 draft QAP](#).