

Income Averaging

Policy Summary

by State

A compilation of existing state guidance

01/18/2019

This document provides a summary of published state LIHTC allocating agency guidance. Such guidance may have changed after the research was conducted. Every effort has been made to ensure accuracy, but it is intended for informational purposes only; it does not claim to represent an official statement of any state's policy. The source of information for each state is cited as much as possible. These sources should be cited for up-to-date information.

Boston Capital

Updated: 01/18/19

Boston Capital - State Status Regarding Income Averaging

Note: 45 States to date have published their status on the use of
Income Averaging
35 - Yes
05 - No
05 - 2019 QAP issued but no reference made to IA

<u>State</u>	<u>Document Type</u>	<u>Income Avg. Approved (Y/N)</u>	<u>Quoted from Notices & QAP</u>
Alabama	N/A	N/A	The 2019 Draft QAP is available on Alabama Housing's website. There is no mention of income averaging in the current 2019 Draft QAP as of 01/18/19.
Alaska	AJ Johnson Newsletter	No	<u>Information Provided on 07/24/18:</u> The state will not permit owners to elect Income Averaging - Developers can only use the 20/50 or 40/60 set-aside.
Arizona	Final 2019 QAP	Yes	<u>Final 2019 QAP Dated 12/11/18:</u> "Income Averaging Owners that elect "average income" as the minimum set-aside on IRS Form 8609 pursuant to I.R.C. § 42(g)(1)(C) shall comply with each and every one of the following restrictions and requirements in addition to any federal requirements under this minimum set-aside election: 1. Only Projects requesting Tax Credits through an Application submitted under this Plan are eligible to elect the "average income" set aside. Prior Applications are ineligible; 2. The average income of the Units shall be limited to 58% as a safe harbor; 3. The Project shall maintain the average income promised in the Application for scoring through the Extended Use Period. Failure to do so shall result in the Project (and any and all of the Projects affiliated with the Developer) to be considered out of compliance with ADOH until the average income is restored to the level promised in the Application; 4. Owners shall pay the applicable increased fee in Section 6.6; 5. 100% of the Units in the Project shall be LIHTC Units; 6. Project is not a re-syndication of a prior Allocation of Tax Credits; 7. Project's capital stack shall not include USDA Rural Development, Rental Assistance, RAD, or National Housing Trust Fund; 8. Income and rent levels shall be limited to four of the following income bands: thirty percent (30%) of AMGI, forty percent (40%) of AMGI, fifty percent (50%) of AMGI, sixty percent (60%) of AMGI, seventy percent (70%) of AMGI, eighty percent (80%) of AMGI; 9. All buildings in the Project shall be included as one multiple building Project, as referenced on line 8b of IRS Form 8609; 10. Units shall be represented in the Application for Tax Credits as fixed with the defined AMGI percentage and all AMGI levels shall be dispersed evenly among all Unit sizes; 11. Any changes to the fixed defined AMGI percentage shall be a Material Change under Section 5.5 of this Plan, subject to ADOH approval. Approval after Forms 8609 are issued shall be processed through ADOH's compliance division; 12. Written approval of the syndicator, all lender(s) and the Property Manager shall be required in the Application, and with the equity closing submittal described in Section 3.2 of this Plan (if applicable), and with the 8609 package set forth in Section 3.4 of this Plan; 13. The Market Demand Study described in Exhibit C shall evidence sufficient demand for all Unit designations and rent levels proposed in the Application"
Arkansas	N/A	N/A	The 2019 QAP is available on Arkansas Housing's website. There is no mention of income averaging in the current 2019 QAP as of 01/18/19.

Updated: 01/18/19

Boston Capital - State Status Regarding Income Averaging

Note: 45 States to date have published their status on the use of
Income Averaging
35 - Yes
05 - No
05 - 2019 QAP issued but no reference made to IA

<u>State</u>	<u>Document Type</u>	<u>Income Avg. Approved (Y/N)</u>	<u>Quoted from Notices & QAP</u>
California	Code of Regulations	Yes	<p><u>Notice on 03/26/18 states (Obtained from Novogradac Resource Center):</u> "10325(f)(13) A project that includes Low-Income Units targeted at greater than 60% AMI shall have average targeting that does not exceed 50% AMI. A project with a tax credit reservation dated prior to, or a submitted application pending as of, March 26, 2018 may revise its targeting prior to the recordation of the regulatory agreement to include Low-Income Units targeted at greater than 60% AMI only if the project initially had an applicable fraction of less than 100% and the units targeted at greater than 60% AMI were not initially Low-Income Units, provided that the average targeting does not exceed 50% AMI. All other projects with a tax credit reservation dated prior to, or a submitted application pending as of, March 26, 2018, may not alter the AMI targeting committed to in the application.</p> <p>10326(g)(9) For all applications received on or after March 26, 2018, a non-competitive project that includes Low-Income Units targeted at greater than 60% AMI shall have average targeting that does not exceed 59% AMI. For all applications received on or after March 26, 2018, a competitive project that includes Low-Income Units targeted at greater than 60% AMI shall have average targeting that does not exceed 50% AMI. A project with a tax credit reservation dated prior to, or a submitted application pending as of, March 26, 2018 may revise its targeting prior to the recordation of the regulatory agreement to include Low-Income Units targeted at greater than 60% AMI only if the project initially had an applicable fraction of less than 100% and the units targeted at greater than 60% AMI were not initially Low-Income Units, provided that the average targeting does not exceed 59% AMI for non-competitive projects or 50% AMI for competitive projects."</p> <p><u>Code of Regulations 05/16/18 states:</u> "Section 10325. Application Selection Criteria - Credit Ceiling Applications: A project that includes Low-Income Units targeted at greater than 60% AMI shall have average targeting that does not exceed 50% AMI. A project with a tax credit reservation dated prior to, or a submitted application pending as of, March 26, 2018 may, with the discretionary approval of the Executive Director, revise its targeting prior to the recordation of the regulatory agreement to include Low-Income Units targeted at greater than 60% AMI only to accommodate existing over-income tenants, provided that the average targeting does not exceed 50% AMI. All other projects with a tax credit reservation dated prior to, or a submitted application pending as of, March 26, 2018, may not alter the AMI targeting committed to in the application in order to include Low-Income Units targeted at greater than 60% AMI." "Section 10326. Application Selection Criteria - Tax-exempt bond applications: For all applications received on or after March 26, 2018, a non-competitive project that includes Low-Income Units targeted at greater than 60% AMI shall have average targeting that does not exceed 59% AMI. For all applications received on or after March 26, 2018, a competitive project that includes Low-Income Units targeted at greater than 60% AMI shall have average targeting that does not exceed 50% AMI. A project with a tax credit reservation dated prior to, or a submitted application pending as of, March 26, 2018 may, with the discretionary approval of the Executive Director, revise its targeting prior to the recordation of the regulatory agreement to include Low-Income Units targeted at greater than 60% AMI only to increase the number of Low-Income Units or to accommodate existing over-income tenants, provided that the average targeting does not exceed 59% AMI for non-competitive projects or 50% AMI for competitive projects. All other projects with a tax credit reservation dated prior to, or a submitted application pending as of, March 26, 2018, may not alter the AMI targeting committed to in the application in order to include Low-Income Units targeted at greater than 60% AMI."</p> <p><u>Important Updates to Highlight as of 9/20/18:</u> For projects utilizing IA to house 60-80% AMI tenants in rent-restricted units, the overall income average of the rent restricted units must be 50% AMI or lower.</p>

Updated: 01/18/19

Boston Capital - State Status Regarding Income Averaging

Note: 45 States to date have published their status on the use of
Income Averaging
35 - Yes
05 - No
05 - 2019 QAP issued but no reference made to IA

<u>State</u>	<u>Document Type</u>	<u>Income Avg. Approved (Y/N)</u>	<u>Quoted from Notices & QAP</u>
Colorado	Draft Policy	Yes	<p>Final Policy dated 12/01/18 states: "CHFA Timelines for Implementation CHFA will implement this IA policy effective January 1, 2019. Reference to IA implementation will be included in CHFA's Qualified Allocation Plan (QAP), LIHTC excel application, and other applicable forms for 2019.</p> <p>Projects Eligible for IA 2019 Applications CHFA will accept LIHTC applications requesting the IA election for projects with 100% LIHTC units starting January 1, 2019. The IA election may be requested for 9% federal LIHTC, 4% federal LIHTC, and 4% federal/state AHTC applications for new construction or acquisition/rehabilitation projects. In instances where CHFA awards acquisition/rehabilitation LIHTC for projects with existing LIHTC restrictions in place, the IA election would not go into effect until the end of the prior extended use period under the previous LURA. CHFA, as the LIHTC allocating agency, is required to give preference to projects that serve the lowest income households for the longest period of time under the federal Internal Revenue Code, Section 42. Further, all applications will be evaluated in accordance with the QAP. For 4% projects, the minimum set-aside requirements must be met for tax-exempt bond financing in addition to the IA election for LIHTCs. Units with income limits above the tax-exempt bond minimum set-aside (60% or 50% AMI as applicable), do not count for purposes of bond compliance.</p> <p>Projects Approved for LIHTC Prior to 2019 Projects that received an award of LIHTC prior to 2019 may be eligible for IA only under the following conditions:</p> <ul style="list-style-type: none"> • The project is a 4% project with no competitive (state or 9% federal) credit, and • The project units are 100% LIHTC and • All projects must submit the following: <ul style="list-style-type: none"> o An updated LIHTC application using the 2019 excel application reflecting the new IA designations and any other change from the previous application; o A revised market study that incorporates the IA designations in the demand analysis; The revised market study must match the submitted application regarding income targeting, unit mix, unit sizes, and rents. o Written consent of the IA election from the proposed permanent lender(s), and equity provider, and any other anticipated funding sources prior to issuance of the IRS 8609. o Refer to the QAP and the IA Compliance Policy regarding owner and agent trainings required prior to the issuance of the IRS 8609. • All requests are subject to review and approval of CHFA as well as availability of additional tax-exempt bond cap if needed for the project changes. <p>Projects Not Eligible for the IA Election The following types of projects will not be eligible for the IA election:</p> <ul style="list-style-type: none"> • Applications requesting the IA election for projects that include non-LIHTC/market rate units • Applications that were awarded competitive credit (state or 9%) prior to 2019 • Projects that placed in service prior to December 31, 2018" <p>Important to Note: Draft 2019 QAP states: "Owners who intend to elect Income Averaging (IA) as the minimum set-aside for their development must refer to CHFA's Compliance Monitoring guidance on the IA Resource Page (https://www.chfainfo.com/arh/lihtc/Pages/Income-Averaging.aspx) for additional restrictions, reporting requirements, and monitoring responsibilities required of the owner and agent."</p>

Updated: 01/18/19

Boston Capital - State Status Regarding Income Averaging

Note: 45 States to date have published their status on the use of
Income Averaging
35 - Yes
05 - No
05 - 2019 QAP issued but no reference made to IA

<u>State</u>	<u>Document Type</u>	<u>Income Avg. Approved (Y/N)</u>	<u>Quoted from Notices & QAP</u>
Connecticut	Guidelines	Yes	<p><u>Notice 05/30/18 states:</u> "The Consolidated Appropriations Act of 2018 establishes Income Averaging as a new minimum set-aside election for new Low-Income Housing Tax Credit (LIHTC) developments. Applicants requesting LIHTCs in conjunction with an application to DOH under CHAMP 12 may utilize Income Averaging. The current Consolidated Application (ConApp) has not yet been revised to accommodate these changes. In order to provide accurate information in the ConApp, applicants utilizing Income Averaging are requested to choose the closest AMI band to what they intend to include and input the proper rental income information corresponding to the rent limit they intend to use on Exhibit 5.1, Rental Income Calculation Worksheet in the ConApp workbook provided. All applicants that choose to utilize Income Averaging are required to provide a completed, stand-alone Rental Income Calculation Worksheet for Income Averaging that can be found on our website. This exhibit will allow the selection of income bands in ten-percent increments from 20% to 80%, as well as a 25% income band. Rent limits for the new percentage increments have been built into a workbook with our current limits and are available on our website. Please keep in mind that applications must also meet the minimum set-aside requirements for the use of tax-exempt bonds, as well as those outlined in the CHFA Qualified Allocation Plan."</p> <p><u>Guidelines Dated June 2018 state:</u> "The Consolidated Appropriations Act of 2018 establishes Income Averaging as a new minimum set-aside election for new LIHTC developments. It allows LIHTC Qualified Units to serve households earning as much as 80% of Area Median Income (AMI) so long as the average income limit of the Qualified Units is 60% or less of AMI. Designated income levels for the Qualified Units may be set at 10% increments between 20% and 80% of AMI. CHFA will accept proposals for utilizing Income Averaging in applications that are under consideration, have already been approved or awarded by CHFA's Board of Directors, or have already initial closed, subject to the requirements outlined below.</p> <p>General Requirements for All Income Averaging Proposals</p> <ul style="list-style-type: none"> • CHFA will not consider any proposal that includes an increase to 9% LIHTCs • Utilization of Income Averaging requires CHFA consent • Proposals will not be accepted without evidence of approval by the syndicator • Depending on the magnitude of the proposed changes, reconsideration by the CHFA Board of Directors may be required, and/or the Mortgagor may incur additional fees • The change in the AMI bands must be supported by a market study • The proposal must maintain the requirements of any CHFA/DOH funding award • A revised Consolidated Application and associated exhibits may be required • Sufficient time must be allowed for CHFA to underwrite the new proposal • If the use of Income Averaging triggers higher fees for compliance monitoring, the increase will need to be incorporated into the project budget <p>Additional Requirements for Developments that have Already Initial Closed</p> <ul style="list-style-type: none"> • Proposals will only be considered for Developments that have not yet executed form 8609 • The proposal must create additional Qualified Units and allow for a reduction to scarce State resources (e.g. funding from CHFA, DOH, or another State agency) • The proposal must continue to meet the requirements of Section 42 and Section 142 of the Internal Revenue Code • Set-aside elections made in the Extended Low-Income Housing Commitment executed at initial closing and recorded on the land records may need to be amended <p>Additional Requirements for Developments that have Received a 9% LIHTC Award</p> <ul style="list-style-type: none"> • The proposal must include all the items for which points were awarded, including maintaining sufficient levels of 25% AMI units and unrestricted market rate units • 25% AMI units may be counted at 30% AMI for purposes of Income Averaging, but the ELIHC shall require those units to be restricted to households at or below 25% of AMI • The proposal must continue to meet the requirements of Section 42 of the Internal Revenue Code 3 <p>Additional Requirements for Developments with Financing Approved by the CHFA Board of Directors but Not Yet Initial Closed</p> <ul style="list-style-type: none"> • The proposal must create additional Qualified Units and allow for a reduction to scarce State resources (e.g. ITA, DOH, etc.) • The proposal must continue to meet the requirements of Section 42 and Section 142 of the Internal Revenue Code"

Updated: 01/18/19

Boston Capital - State Status Regarding Income Averaging

Note: 45 States to date have published their status on the use of Income Averaging
 35 - Yes
 05 - No
 05 - 2019 QAP issued but no reference made to IA

State	Document Type	Income Avg. Approved (Y/N)	Quoted from Notices & QAP
Delaware	N/A	N/A	The 2019 Draft QAP is available on Delaware Housing's website. There is no mention of income averaging in the current 2019 Draft QAP as of 01/18/19.
Florida	Final Policy	Yes	<p>Final Policy "Best Practices on Income Averaging" 10/05/18 states:</p> <p>"The Board approved a resolution at the September 14th board meeting which delegates authority to designated staff to consider, grant, or deny requests for Waiver or Variance of R.67-48.0023(2), Fla. Admin. Code, regarding requests for changes in application set-aside designations for the purpose of electing Income Averaging. With the necessary authority in place, Florida Housing is releasing this document to serve as the corporation's Final Policy on Income Averaging. This policy is applicable for Developments that are currently under construction or have recently completed construction and meet the following requirements:</p> <ul style="list-style-type: none"> • 9% Developments: <ul style="list-style-type: none"> o Received or will receive an allocation of 2018 or prior year credits o Have not received their 8609s • 4% Developments: <ul style="list-style-type: none"> o Applied or will apply under the 2018 or prior year version of the rule o Have not received their 8609s <p>If you wish to pursue Income Averaging for a development that falls into one of the two categories above, please fill out the Average Income Test Election form and submit it to Florida Housing as outlined in the form. This will trigger Florida Housing to begin the next steps in the process to determine if your development qualifies to change its minimum set aside election. You will also need to execute the Applicant Income Averaging Acknowledgement and Certification form, which must be submitted with the Average Income Test Election form.</p> <p>Florida Housing Requirements of Income Averaging</p> <ul style="list-style-type: none"> • Units provided additional funding through the National Housing Trust Fund (NHTF) program, which are required to be set aside for households at or below 22% AMI, may not be offset by units designated at an AMI that is greater than the AMI category applicable to NHTF. • For both 4% and 9% Housing Credit transactions, the overall AMI of the Housing Credit Set-Aside Commitment may be averaged up to 60%. • On Housing Credit transactions with SAIL, SAIL units must be Income Averaged along with the Housing Credit units. • On 4% Housing Credit transactions that include SAIL ELI funding: <ul style="list-style-type: none"> o If the ELI loan has not closed, the development may: <ul style="list-style-type: none"> ▪ Reject the ELI funding award and income average all of its set-aside units, which must include at least a 5% ELI commitment for the entire 50-year affordability period. ▪ Keep the ELI funding award, and income average all of its set-aside units, which must include at least the ELI set-aside commitment from the application plus 5% for the entire 50-year affordability period. o If the ELI loan has already closed, the development may income average all of its set-aside units, which must include at least the ELI set-aside commitment from the application plus 5% for the entire 50-year affordability period. • The 10% ELI set-aside for 9% Housing Credit Family and Elderly developments will be increased to a 15% set-aside. • The 20% ELI set-aside for 9% Housing Credit Preservation developments will be increased to a 25% set-aside. • Workforce Housing Developments – We will allow Workforce Housing Developments to Income Average. Workforce developments that choose Income Averaging will have to increase the 5% ELI commitment to a 10% ELI commitment and the overall AMI may be averaged up to 60%. • To the extent the various ELI scenarios provided above do not represent a particular Applicant's ELI commitment scenario, the intent is to allow income averaging with an increase in the Applicant's ELI set-aside commitment of 5%. • We have not made any decisions on allowing Income Averaging in specialized developments such as the Homeless or Disabling Condition Demographic. If there are owners with these types of developments that would like to elect Income Averaging, they should reach out to Florida Housing for further discussion. • Regardless of the designated AMI category of the ELI County Chart, if Income Averaging is elected, all ELI units in a development will use the federal 30% AMI standard. • If a development is already either partially or fully leased up, Florida Housing is concerned that the current incomes/rent may not meet the new Income Averaging requirements. Therefore, the review for the new Income Averaging set-aside will require evaluation of compliance with income and rent requirements for all households at income limit levels at or below 50% AMI, at the Developer's expense. The evaluation review must take place prior to approval of the change in set-aside commitments. It should be noted that it may be logistically impossible for some developments to meet the Income Averaging requirements if they have already begun or completed lease up. • For developments that have already received their Certificate of Occupancy or have begun preleasing, the development may be income averaged under the condition that rents cannot be increased until the end of the term of the existing lease with a three-month notice of the increase, regardless of any escalation clause contained in the lease. Rents may not be increased beyond the current rent limit for the existing AMI designation until expiration of the next lease when less than three months remain on the current lease, regardless of any escalation clause contained in the lease. It is the owner's responsibility to notify the tenant and modify the lease with these terms. This may be verified during the course of Compliance Monitoring."

Updated: 01/18/19

Boston Capital - State Status Regarding Income Averaging

Note: 45 States to date have published their status on the use of
Income Averaging
35 - Yes
05 - No
05 - 2019 QAP issued but no reference made to IA

<u>State</u>	<u>Document Type</u>	<u>Income Avg. Approved (Y/N)</u>	<u>Quoted from Notices & QAP</u>
Florida (Cont.)	Final Policy	Yes	<p>Final Policy "Best Practices on Income Averaging" 10/05/18 states (Continued):</p> <p>"All developments must adhere to the income averaging requirements outlined below. The approval of the change in set-aside designation will be subject to the following conditions:</p> <ul style="list-style-type: none"> • An updated Market Study will be ordered by the Underwriter and the Underwriter will provide an Update Letter to the original Credit Underwriting Report (at the Developer's expense). The Update Letter will reflect the new Income Averaging election and, at a minimum, will verify compliance with income/rent requirements of the existing households, summarize the findings of the updated Market Study and provide a new rental chart, Year 1 Pro Forma, 15-Year Pro Forma, and Underwriter recommendation. The election of Income Averaging will be contingent upon a positive recommendation from the Underwriter. • If a Development has already received a Market Study that incorporates the Average Income Test designations, this may be considered by the Underwriter at their discretion. • The Applicant must comply with all ELI requirements of the new Income Averaging policy, which will be confirmed in the Update Letter to the underwriting report. • The updated Market Study must be provided to the Syndicator and Permanent Lender, who in turn must each provide a letter to FHFC reflecting their respective acceptance of change. The Syndicator's letter should also detail the process they will undergo to review compliance with the new income/rent restrictions under the new Income Averaging set-aside election. • Once FHFC receives the updated Market Study, Update Letter to the Credit Underwriting Report and letters from the Syndicator and Lender, the developer may submit the petition for rule waiver to Florida Housing's Corporation Clerk. • After the petition for rule waiver is approved, FHFC will proceed with an amendment to the existing Extended Use Agreement (if applicable) and SAIL LURA (if necessary/applicable). Upon execution by all parties, FHFC will send the Amended EUA to the appropriate county for recording. Upon receipt of the recorded Amendment and satisfaction of all other Housing Credit requirements, FHFC will release the 8609s. • If the Link Memorandum of Understanding has been executed, it must be re-executed with the updated Link unit numbers if necessary. • There will be additional fees associated with the change in the set-aside election for the update to the Market Study and CUR. • At each Board meeting, Florida Housing staff will provide an informational item to the Board informing them of developments that have been approved to change their minimum set-aside election. <p>Other Considerations</p> <ul style="list-style-type: none"> • For IRS Housing Credit purposes, Income Averaging will be applied to ALL buildings in a development that contain set-aside units. • Each building or each designated multiple building project within a HC development, as applicable, must individually meet Income Averaging requirements. • It should be noted that if Income Averaging is chosen and a property has NHTF units that Florida Housing has specified, these units will not be included in Income Averaging calculations. For purposes of the IRS, these units will be considered 60% AMI units. For Florida Housing purposes, these NHTF units will not be included in the Income Averaging calculation and may not be offset by units designated at an AMI that is greater than the AMI category applicable to NHTF. • Income Averaging will not be based on number of bedrooms in a unit and FHFC will allow for floating unit designations, unless future IRS guidance is released that conflicts with this policy. However, for the preparation of the Extended Use Agreement (and any applicable Land Use Restriction Agreement), the number of qualifying Housing Credit units at each IRS AMI tier must be identified by the Applicant. The designations made and recorded in the Extended Use Agreement must be maintained throughout the Extended Use Period. • Income Averaging applies to both income and rent limits. • A development that is undergoing resyndication should proceed with caution. The requirements of the original EUA will not cease and the Income Averaging election cannot conflict with existing EUA set-aside requirements. We will take developments into consideration on a case by case basis, but it may be impossible to meet income/rent set-aside requirements of both EUAs during the first thirty years of the original EUA. The applicable fraction at the end of the first year of the original Credit Period must be maintained throughout the term of the original EUA. • Income Averaging does not apply to the separate tax-exempt bond set-aside requirements. Therefore, set-aside requirements related to the tax-exempt bonds must be met within the units designated at or below 60% AMI. • No additional Compliance Monitoring Fees are anticipated at this time."

Updated: 01/18/19

Boston Capital - State Status Regarding Income Averaging

Note: 45 States to date have published their status on the use of
Income Averaging
35 - Yes
05 - No
05 - 2019 QAP issued but no reference made to IA

<u>State</u>	<u>Document Type</u>	<u>Income Avg. Approved (Y/N)</u>	<u>Quoted from Notices & QAP</u>
Georgia	Final Policy	Yes	<p><u>Income Averaging Policy dated 09/12/18 states:</u> "DCA adopted requirements and interpretations: <ul style="list-style-type: none"> • Developments either awarded before 2018 (including tax exempt bonds awarded under the 2017 QAP) or with a 2018 DCA HOME commitment are ineligible. • 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 LURA must have designations of 60% AMI or lower. • 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. • 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: <ul style="list-style-type: none"> o reduce relocation impact in occupied rehab properties, o comply with the requirements of federal project-based assistance, and o facilitate HUD 811 units or other forms of supportive housing. • Owners will need DCA approval (using the Project Concept Change process) to change designations prior to the property reaching full occupancy. • The recorded LURC will contain a general provision regarding the election but will not list unit designation specifics. • 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). • DCA will monitor properties' compliance at least annually. The monitoring fee is \$1,000 per unit. • Leasing to an over-income household or exceeding the maximum housing expense does not automatically increase a unit's percent designation. • 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. • 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. • 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 <ul style="list-style-type: none"> o a property has market rate units, one or more of which become vacant, and o 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. <p>Requests to change set-aside must include the following: <ul style="list-style-type: none"> • An updated DCA Core Application reflecting all designations/changes. • A matrix showing the AMI percentage(s) for each designated unit type. • 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). • A statement from permanent lenders and the equity provider acknowledging income averaging. • A new or revised market study showing adequate demand for all possible combinations of unit sizes and percent limits. • Statement committing to annual income averaging training for on-site property managers. <p>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. <ul style="list-style-type: none"> • 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. • The 70% and 80% designated rents do not need to meet the 2018 QAP requirement of being at least 10% less than market rents. <p>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)."</p> <p><u>Important Updates to Highlight as of 9/20/18:</u> 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. 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. Income limits must be equally distributed among bedroom sizes</p> </p></p></p>

Updated: 01/18/19

Boston Capital - State Status Regarding Income Averaging

Note: 45 States to date have published their status on the use of Income Averaging
 35 - Yes
 05 - No
 05 - 2019 QAP issued but no reference made to IA

<u>State</u>	<u>Document Type</u>	<u>Income Avg. Approved (Y/N)</u>	<u>Quoted from Notices & QAP</u>
Hawaii	N/A	N/A	The Draft 2019/2020 QAP is available on Hawaii Housing's website. There is no mention of income averaging in the Draft 2019/2020 QAP as of 01/18/19.
Idaho	-	-	-
Illinois	Notice	Yes	<p><u>Email Notice on 08/03/18 states:</u></p> <p>"IHDA UPDATE Updated PPA and Application Timelines and Income Averaging Update From IHDA E-Newsletter dated 8-3-18 - Income Averaging</p> <p>As is well known throughout the affordable housing industry, Congress recently created a new occupancy set-aside option known as "income averaging." Instead of electing the 20/50 or 40/60 minimum set-aside, an owner may elect an income averaging set-aside. This allows a property to serve households up to 80% AMI, as long as at least 40% of the total units are rent and income restricted and the average income limit for all tax credit units in the project is at or below 60% AMI. The Authority understands its stakeholders are excited to take advantage of this new option to better serve the needs of those seeking affordable housing. Given the nuances of this new set-aside option, the Authority is carefully reviewing applicable law and industry guidance with the goal of developing a policy around income averaging that will ensure the Authority can continue to administer the low-income housing tax credit ("LIHTC") program in the most effective and efficient way possible. As the Authority continues its analysis of this new set-aside option, the Authority wanted to provide some information about the parameters currently being considered. The information in this bulletin is not intended to be conclusive or exhaustive. The Authority's final policy may or may not include the elements discussed below. In addition, if determined to be applicable, the Authority will take steps to amend the 2018-2019 Qualified Allocation Plan. Please note, developments will be ineligible to select income averaging if: (i) the development received 9% LIHTC award from the Authority in 2018 (or earlier); or (ii) the development receives a 9% award from the Authority in 2019; or (iii) the development already has a recorded Extended Use Agreement (including resyndications); or (iv) the development already filed a Form 8609. Developments seeking 4% LIHTC's that desire to elect income averaging will be considered by the Authority on a case-by-case basis. Tax exempt bond developments will still need to meet all applicable bond-related compliance requirements. Additionally, the Authority is in the process of updating the Affordable Rental Unit Survey (ARUS) to reflect all the allowable income levels under income averaging. Please click the link below for additional information. https://www.ihda.org/developers/market-research/affordable-rental-unit-survey/</p> <p>Anticipated mandatory requirements for any development requesting to elect income averaging:</p> <ul style="list-style-type: none"> • All units must be designated low income; the development may not contain unrestricted or market rate residential units. • Designated income/rent levels may only be set at 10% increments beginning at 20% of AMI. Allowable income/rent designation levels are 20%, 30%, 40%, 50%, 60%, or 80% of AMI. The Authority reserves the right to limit the number of AMI designations per property. <p>Anticipated supplemental application items for any development requesting to elect income averaging:</p> <ul style="list-style-type: none"> • Written acknowledgement from the LIHTC equity investor that income averaging is compatible with requirements of other public and private funding sources. • Written acknowledgement from the property manager regarding the compliance implications and commitment to provide annual income averaging training to on-site property management. • Payment of an additional application fee to re-underwrite the development, if applicable. • Payment of an additional compliance fee to reflect increased monitoring requirements for developments that elect income averaging. • Updated common application. • Updated market study demonstrating sufficient market demand for each income bracket proposed."

Updated: 01/18/19

Boston Capital - State Status Regarding Income Averaging

Note: 45 States to date have published their status on the use of Income Averaging
 35 - Yes
 05 - No
 05 - 2019 QAP issued but no reference made to IA

State	Document Type	Income Avg. Approved (Y/N)	Quoted from Notices & QAP
Indiana	Notice	Yes	<p>Notice on 05/02/18 states:</p> <p>"Applicability to 9% LIHTC Developments Funded in 2018 Round IHCDCA will allow any 9% LIHTC development that received a reservation of 2018 tax credits in February 2018 to request a modification in order to follow the Income Averaging rules. IHCDCA cannot entertain any modification requests for projects that have already been issued 8609s. The minimum set-aside election, once elected, is irrevocable. Therefore, Income Averaging cannot be retroactively applied to existing projects. In addition, IHCDCA has made the policy decision to not allow an Income Averaging modification request for any development that received a reservation of credits prior to the 2018 round, regardless of whether or not that development has been issued 8609s. To request a modification, the owner must submit the following information to Peter Nelson, IHCDCA's Rental Housing Tax Credit Specialist (pnelson@ihcda.in.gov):</p> <ul style="list-style-type: none"> • IHCDCA's Income Averaging Minimum Set-Aside Request Form (posted below this RED Notice). • Updated pages of Form A, including but not limited to pages reflecting minimum set-aside election, unit mix, rents charged, and the pro forma • Update from the market analyst confirming that they have reviewed the proposed changes in income targeting and rents charged and that the changes will not negatively impact market demand • Per QAP policy on modifications, a modification fee of \$1000 plus an additional fee of \$1500 if the recorded lien must be amended and re-recorded. • Owner must work with IHCDCA to amend the extended use agreement (Lien and Restrictive Covenant Agreement) if already recorded. The lien must reflect updated income and rent restrictions applicable to the project. <p>Approval is subject to IHCDCA's confirmation that (1) the owner's proposed plan meets the Income Averaging requirements and (2) the application still meets IHCDCA's underwriting and market study threshold requirements. IHCDCA will not approve any request that results in a decrease in the total number of tax credit units committed to in the initial application. In addition, the request to convert to Income Averaging cannot result in any change in score, including scoring related to rent restrictions. All scoring commitments must remain the same as committed in the initial application.</p> <p>Applicability to 9% LIHTC Developments in Upcoming 2019 Round Any application to be submitted in the 2019 tax credit round (applications due July 30, 2018) may request to utilize an Income Averaging minimum set-aside. IHCDCA will release a revised application form (Form A) that includes the necessary elections and income/rent levels. No threshold or scoring categories of the 2018-2019 Qualified Allocation Plan will be amended. All applications in the 2019 round must follow the established threshold and scoring criteria, including the existing scoring matrix for rent restrictions. If selecting Income Averaging, the income and rent restrictions on a unit must match."</p> <p>"Applicability to 4%/ Tax-Exempt Bond Developments Section 142 (the tax-exempt bond regulations) was not amended to include income averaging provisions. Therefore, for eligibility for tax exempt bonds under Section 142, a project must still meet a 20/50 or 40/60 minimum set-aside. However, for purposes of the 4% credit allocation, the project can elect to do income averaging. Therefore, a 4%/bond development can elect an income averaging minimum set-aside for purposes of tax credit compliance, as long as the unit mix selected would also meet either a 20/50 or 40/60 minimum set-aside test for purposes of bond compliance. IHCDCA will allow any 4%/bond development that has already received an allocation but that has not yet submitted a final application to request a modification in order to follow the income averaging rules. A development that has already started lease-up can potentially request a modification, but logistically this may be difficult since the property would not have created a tenant selection plan and leased up following income and rent restrictions that would meet the income averaging requirements. An owner considering submitting a request for a development that has started lease-up should contact IHCDCA to discuss. IHCDCA cannot entertain any modification requests for projects that have already been issued 8609s. The minimum set-aside election, once elected, is irrevocable. Therefore, income averaging cannot be retroactively applied to existing projects. To request a modification, the owner must submit the following information to Peter Nelson, IHCDCA's Rental Housing Tax Credit Specialist (pnelson@ihcda.in.gov):</p> <ul style="list-style-type: none"> • IHCDCA's Income Averaging Minimum Set-Aside Request Form (posted below this RED Notice). • Updated pages of Form A, including but not limited to pages reflecting minimum set-aside election, unit mix, rents charged, and the proforma • Update from the market analyst confirming that they have reviewed the proposed changes in income targeting and rents charged and that the changes will not negatively impact market demand • Per QAP policy on modifications, a modification fee of \$1000 plus an additional fee of \$1500 if the recorded lien must be amended and re-recorded <ul style="list-style-type: none"> o Owner must work with IHCDCA to amend the extended use agreement (Lien and Restrictive Covenant Agreement) if already recorded. The lien must reflect updated income and rent restrictions applicable to the project. Approval is subject to IHCDCA's confirmation that (1) the owner's proposed plan meets the income averaging requirements and (2) the application still meets IHCDCA's underwriting and market study threshold requirements. IHCDCA will not approve any request that results in a decrease in the total number of tax credit units committed to in the initial application. IHCDCA will not rescore applications and will allow 4%/bond developments to alter their initial scoring related to rent restrictions. All other scoring commitments must remain the same."

Updated: 01/18/19

Boston Capital - State Status Regarding Income Averaging

Note: 45 States to date have published their status on the use of
Income Averaging
35 - Yes
05 - No
05 - 2019 QAP issued but no reference made to IA

State	Document Type	Income Avg. Approved (Y/N)	Quoted from Notices & QAP
Iowa	Final 2019 QAP	Yes	<p>Final 2019 QAP states: "Income Average Test (Income Averaging) At a minimum forty percent (40%) or more of the residential Units in a Project serve households earning as much as eighty percent (80%) AMI, as long as the average income/rent limit in the property is sixty percent (60%) or less of AMI. All of the following restrictions and requirements shall apply if this election is made for this minimum set-aside:</p> <ul style="list-style-type: none"> • All Units in the Project shall be LIHTC Units; and • Projects shall not be a prior LIHTC Project; and • Projects shall not utilize other federal funding sources, such as HOME, Rural Development, HUD, etc.; and • Income and rent levels are restricted to four of the following AMI levels: Twenty percent (20%) of AMI, thirty percent (30%) of AMI, forty percent (40%) of AMI, fifty percent (50%) of AMI, sixty percent (60%) of AMI, seventy percent (70%) of AMI, and eighty percent (80%) of AMI; and • All buildings in the Project shall be included as one multiple building Project, as referenced on line 8b of IRS Form 8609; and • Units shall be represented in the Threshold Application as fixed with the defined AMI percentage and all AMI levels shall be dispersed evenly among all Unit sizes; and • An annual re-certification shall be conducted to determine continued eligibility for all LIHTC household tenant income; and • An annual IFA audit of all tenant files shall be conducted to determine continued eligibility of all LIHTC households. Physical inspections will take place during the normal three year or five year cycle. <p>This category is not available for Sections 2.2.2 – Supportive Housing for Families Set-Aside, 4.10.3 – Special Considerations for Projects Serving Lower AMIs, 6.1.1 – Serves Lowest Income Residents, 6.1.2 – Market Rate Incentive, 6.1.4 – Provides an Opportunity for Homeownership or 6.3.3 – Projects that have Federal Project-Based Rental Assistance, HUD-VASH Voucher Assistance or Local Project-Based PHA (Public Housing Authority) Voucher Assistance"</p>
Kansas	Final 2019 QAP	Yes	<p>Final 2019 QAP states: "Income averaging is allowed for any application, including tax exempt bond applications, except for any resyndication of existing tax credit properties, pending guidance from IRS. However, this option is not retroactive for properties that have already established their minimum set aside on Part II of the 8609 form. In addition, a property financed with tax exempt bonds must meet both the original minimum set aside and the income averaging set aside. The application must show how income averaging will be implemented either by indicating a unit by unit designation or by a percentage designation of units. The selected designation will be shown on the Declaration of Land Use Restrictive Covenants. Each selected income designation must have the rent limit that is appropriate for that designation. A vacant unit at any designated income level will be counted when determining the average. Any designated income units may float within the property or a building depending on the election made on the 8609 form. Owners may need to select the multiple building designation in order to maintain the 60% average depending on the number and size of the buildings. However, income averaging could be done in a single building, all of the buildings or a group of buildings comprising less than the total number of buildings. Any specifically designated units can be leased to a household with a lower income than the specifically designated unit but for income averaging purposes that unit will be counted at the designated income level. However, the unit cannot be leased to a higher income household. Market rate units should be confined to buildings where there are no low income units to avoid the available unit rule. If there are market rate and low income units in a building the 140% rules shall apply based on the designated income of the unit that has exceeded this percentage. A property with National Housing Trust Fund sourcing must have rents that meet the 30% income and rent limits in order to qualify for the 30% increment category. The higher allowable poverty rate rent will not qualify for the 30% increment. Any development with a reservation or allocation that has not been issued an 8609 form is eligible for income averaging under the terms and conditions expressed herein. Any future IRS guidance will take precedence over the policy stated herein if the guidance prohibits this policy."</p>

Updated: 01/18/19

Boston Capital - State Status Regarding Income Averaging

Note: 45 States to date have published their status on the use of Income Averaging
 35 - Yes
 05 - No
 05 - 2019 QAP issued but no reference made to IA

State	Document Type	Income Avg. Approved (Y/N)	Quoted from Notices & QAP
Kentucky	2019/2020 Multifamily Guidelines	Yes	<p><u>2019/2020 Multifamily Guidelines state:</u></p> <p>"Income averaging is a new minimum set-aside election under Section 42 of the Internal Revenue Code as authorized by the Consolidated Appropriations Act of 2018. Instead of electing the 20/50 or 40/60 minimum set-aside, an owner may instead elect an Income Averaging set-aside, which allows a property to serve households up to 80% AMI, as long as at least 40% of the total units are rent and income restricted and the average income limit for all tax credit units in the project is at or below 60% AMI.</p> <ul style="list-style-type: none"> • Only properties funded under the 2019-2020 QAP or later are eligible to elect the Income Averaging set-aside. • The minimum set-aside election is irrevocable once made on Form 8609. Therefore, existing developments already placed in service with a recorded LIHTC extended use agreement are not eligible to change their minimum set-aside/income election to Income Averaging. • Income averaging is only permitted if all residential units are designated low-income; the project may not contain unrestricted or market rate residential units. Manager units are not subject to this restriction and are permitted in Income Averaging developments. • All of the units must be affordable to and occupied by persons earning 80% AMI or less. At least 50% of all units must be affordable to and occupied by persons earning 60% AMI or less. • The average of the imputed income limitations designated cannot exceed 60% AMI. • Designated income/rent levels may only be set at 10% increments beginning at 20% of AMI. The allowable income/rent designation levels are 20%, 30%, 40%, 50%, 60%, 70%, or 80% of AMI. KHC will not allow more than four of the possible AMI designations to be selected per property. • The market study must demonstrate sufficient market demand for each income bracket proposed. • Any clear skewing of unit designations is not allowed. Applicants must provide reasonable parity between different bedroom sizes at each targeted income band utilized on the property. • All units must be designated with a specific AMI percentage at the time of application. • Other than as may be limited by future federal guidance or other funding source restrictions, owners may change unit percent designations over time ("float"). However, the rent for tenant households may not increase due to the unit being changed to a higher increment. • Owners of developments with more than one building will indicate 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). • Tax-Exempt Bond projects must still meet a 20/50 or 40/60 minimum set-aside; however, for purposes of the 4% credit allocation, the project can elect to do Income Averaging. Therefore, a bond project with 4% credits can elect an Income Averaging set-aside for purposes of tax credit compliance, as long as the unit mix selected would also meet either a 20/50 or 40/60 minimum set-aside test for purposes of bond compliance. "
Louisiana	-	-	-
Maine	N/A	N/A	The 2019 QAP is available on Maine Housing's website. There is no mention of income averaging in the current 2019 QAP as of 01/18/19.
Maryland	Final QAP	Yes	<p><u>Final 2018 QAP Amended 08/01/2018 states:</u></p> <p><u>"Income and Rent Restrictions</u></p> <p>In accordance with changes to §42 of the Internal Revenue Code by the federal Consolidated Appropriations Act of 2018, and effective in the State of Maryland as of August 1, 2018, the project owner must select one of the following three (3) set-aside elections (the Set-Aside Election): 1) at least 20% of the housing units in the project for households with incomes at or below 50% of the area median gross income (the 20@50 Set-Aside); 2) at least 40% of the housing units in the project for households with incomes at or below 60% of the area median gross income (the 40@60 Set-aside); or 3) at least 40% of the housing units in the project for households with incomes at or below 80% of the area median gross income so long as the average gross income for the restricted units in the project does not exceed 60% of the area median gross income (the Income Averaging Set-Aside). Household size is based on certain assumptions involving the bedroom configurations of the rental units. Rents for LIHTC units may not exceed 30% of the applicable income limit. The Set-aside Election must be made, and is irrevocable, no later than the date of the execution of the project's IRS Form 8609 by CDA and the project owner in accordance with the requirements of Section E.8, below. "</p>

Updated: 01/18/19

Boston Capital - State Status Regarding Income Averaging

Note: 45 States to date have published their status on the use of Income Averaging
 35 - Yes
 05 - No
 05 - 2019 QAP issued but no reference made to IA

<u>State</u>	<u>Document Type</u>	<u>Income Avg. Approved (Y/N)</u>	<u>Quoted from Notices & QAP</u>
Massachusetts	Policy	Yes	<p>Income Averaging Policy Dated 08/29/18 states: "Given the many uncertainties associated with IA, at this time DHCD will only contemplate approval of IA as the basis for threshold eligibility under Section 42(g)(1) of the Code under the circumstances set forth below.</p> <p>Projects in Which Income Averaging May be Used; Timing Use of income averaging requires DHCD consent. DHCD currently contemplates limited use of income averaging, primarily in 4% preservation projects, where income averaging may help avoid displacement of residents whose incomes would not otherwise allow them to qualify for LIHTC units. In other contexts, income averaging presents much more complex legal and policy issues, particularly in the absence of implementing Federal regulations. This is particularly true in the context of 9% credits. Accordingly, at this time, DHCD will only contemplate approval of income averaging as the basis under which a project may qualify as a "qualified low-income housing project" under Section 42(g)(1)(C) of the Act in the following circumstances:</p> <ul style="list-style-type: none"> • The project has received a commitment of tax-exempt bonds from MassHousing or MassDevelopment and has sought an allocation of federal 4% credit from DHCD under the 2018-19 (or later) Qualified Allocation Plan; • The project is either: <ul style="list-style-type: none"> - A preservation project where income averaging will help avoid displacement of existing tenants while maximizing use of federal LIHTC, or - A preservation or production project with a workforce housing tier, where there is a material difference between market rents and restricted rents at the 80% AMI level and where the applicant can demonstrate that income averaging is essential to project feasibility; • The project has not yet received its 42(m) tax credit eligibility determination letter; • The project has not yet made a minimum set-aside election on Form 8609 as to the threshold eligibility test applicable to the project under Section 42(g)(1) of the Code; • The project has not yet been placed in service; and • The project does not involve a resyndication of a property previously developed or preserved using LIHTC that is subject to an existing extended use agreement (EUA), if the proposed IA would conflict with the existing EUA minimum set-aside requirements. In general, a resyndication application will only qualify if: <ul style="list-style-type: none"> - 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. <p>DHCD will continue to evaluate the appropriateness of applying IA in other contexts, including projects with 9% credits; however, such projects are not eligible to utilize IA at this time.</p> <p>DHCD Additional Threshold Requirements Relating to Income Averaging:</p> <ul style="list-style-type: none"> • DHCD will allow up to four of the following AMI designations to be selected at a property utilizing IA: 30%, 50%, 60% and 80%. • Consistent with the QAP, a property must reserve at least ten percent of its total units for persons or families earning no more than 30% of AMI. Accordingly, each property seeking to utilize IA must at least satisfy the QAP requirements for ELI units. • Projects with fewer than 60 units will not be approved for IA absent compelling circumstances. While DHCD will examine requests on a case-by-case basis, the following are examples of reasons why DHCD would contemplate IA at a project with fewer than 60 units: <ul style="list-style-type: none"> - A project has several current tenants with incomes between 60% - 80% AMI in a location where there is a substantial disparity between rents at 80% AMI and market rents; - A project has an existing, project-based rental assistance contract that will be renewed for an extended period at the time of financial closing, facilitating marketing and rent-up of units notwithstanding the added complexity associated with having multiple income tiers within the affordable units; or - A scattered site development includes over-income tenants, and use of IA will enable the project to satisfy IRS audit guide requirements that 100% of units are both income and rent restricted. • In general, the proposal must create additional LIHTC units AND allow for a reduction in use of scarce State resources (e.g., funding from DHCD or another state or quasi-public agency). • If the project will receive any deferred-payment loans from either DHCD or MassHousing, the applicant must demonstrate that income averaging will generate additional equity, resulting in a reduction in the aggregate amount of state-funded deferred-payment loans. <ul style="list-style-type: none"> - A portion of any additional equity must be applied to reduce the amount of deferred-payment loans to be provided by state agencies. - In addition, DHCD will require mandatory payments from project cash flow, to be applied to reduce the amount of state deferred payment loans. - In no event will DHCD approve an increased development fee as a result of income averaging."

Updated: 01/18/19

Boston Capital - State Status Regarding Income Averaging

Note: 45 States to date have published their status on the use of
Income Averaging
35 - Yes
05 - No
05 - 2019 QAP issued but no reference made to IA

State	Document Type	Income Avg. Approved (Y/N)	Quoted from Notices & QAP
Massachusetts (Cont.)	Policy	Yes	<p><u>Income Averaging Policy Dated 08/29/18 states (Continued):</u></p> <p>"DHCD Additional Criteria Governing Consideration of Income Averaging Proposals</p> <ul style="list-style-type: none"> • All projects must satisfy all criteria applicable to projects generally under the QAP and Federal law. • DHCD will review requests for use of IA on a case-by-case basis, to assess the impact on project feasibility as well as potential benefits to current tenant households with incomes greater than 60% AMI. • Clear skewing of unit designations is not allowed. Applicants must demonstrate that units at different income tiers will be equitably distributed across the project and among bedroom sizes and unit types. • When requesting approval for IA, an applicant must submit the following information: <ul style="list-style-type: none"> - An updated market study analyzing project rents at the designated income tiers relative to market rents that shows adequate demand for all possible combinations of unit sizes and percent limits selected, including evidence that proposed tenant-paid rents for each affordable unit type at each income tier will be at least 10% below the weighted average rent for the same unit type in comparable market rate rental properties. - An updated One-Stop, with associated exhibits, reflecting all designations/changes. DHCD reserves the right to request additional documentation relating to financial feasibility - A matrix showing the AMI percentages for each designated unit type - A legal opinion stating that the income averaging set aside will be compatible with the requirements of all other anticipated funding sources - A written statement from all construction and permanent lenders, syndicators, and the project equity investor (if known at the time of application), approving the selection of the income averaging set-aside - In a preservation transaction, income certification for current tenants, demonstrating the extent to which use of income averaging will increase the number of eligible LIHTC units and decrease potential displacement of households with incomes over 60% AMI. - Certification that the project will not require additional commitment of Federal or state rental assistance from DHCD as a result of income averaging - Certification that the proposal will continue to maintain the requirements of any state funding award. - Evidence that the applicant and the applicant’s property management company are in good standing with DHCD and other state housing agencies - Disclosure of any noncorrected 8823 findings currently outstanding on properties in the manager’s portfolio as well as all open Management and Occupancy reviews with an unsatisfactory or failing compliance score. - Documentation regarding the capacity of the applicant’s management company to effectively manage properties subject to federal housing compliance requirements in order to handle the additional burdens associated with income averaging, including: <ul style="list-style-type: none"> o Clean track record of timely reporting to DHCD and any other state tax credit allocating agencies funding properties managed by the management company o A statement from the management company committing to annual income averaging training for on-site property managers. o Evidence that the applicant has retained a compliance expert to provide ongoing advice regarding compliance issues. <p>DHCD reserves the right to deny implementation of IA at its discretion, solely based upon previous compliance related performance of the property manager.</p> <p>Other Requirements</p> <ul style="list-style-type: none"> • In addition to other reporting required by the IRS and/or by DHCD under the QAP, an owner electing to satisfy the minimum set-aside test through income averaging must prepare a special annual report on income averaging outcomes, to document: <ul style="list-style-type: none"> - Actual incomes of households in designated income tiers - Comparison of actual and projected net income - Average time to rent up units in each income tier • Income averaging must be incorporated into the tenant selection plan and other related management documents. • Projects utilizing income averaging will be required to pay an increased credit monitoring fee, to cover the anticipated additional costs of monitoring compliance across multiple income tiers. DHCD will publish a separate credit monitoring fee schedule for properties utilizing income averaging. This fee must be incorporated into the project budget. • DHCD reserves the right to require additional third-party monitoring, at developer expense, for the first 3 years following placement in service. • Owners of developments with more than one building will indicate 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). • Applicants electing IA must provide written acknowledgment to DHCD that subsequent guidance from the IRS may result in changes to IA policies. • Owners that elect Income Averaging must have an average income targeting that does not exceed 59% AMI. The purpose of this provision is to ensure that developments remain in compliance with the federal maximum requirement of 60% AMI under Income Averaging. <ul style="list-style-type: none"> - Any development seeking to implement IA must be able to demonstrate that the proposed rents are achievable based on a DHCD commissioned appraisal and are strongly encouraged to underwrite at rents that are less than the maximum 80% rents. <p>Additional Guidance</p> <p>As of the date of this policy, the IRS has issued no regulations or formal guidance on the implementation or administration of the IA minimum set-aside. DHCD strongly encourages applicants considering the use of IA to review all available industry guidance, including materials prepared by recognized industry experts on LIHTC."</p>

Updated: 01/18/19

Boston Capital - State Status Regarding Income Averaging

Note: 45 States to date have published their status on the use of Income Averaging
 35 - Yes
 05 - No
 05 - 2019 QAP issued but no reference made to IA

<u>State</u>	<u>Document Type</u>	<u>Income Avg. Approved (Y/N)</u>	<u>Quoted from Notices & QAP</u>
Michigan	Notice	Yes	<p>Notice on 06/13/18 states: "MSHDA does not intend to restrict the use of Income Averaging to specific developments. Therefore, 9% LIHTC developments as well as 4% LIHTC/Tax Exempt Bond developments will be eligible to make the Income Averaging election. If a development has previously been approved for LIHTC utilizing the 40% at 60% AMI election or the 20% at 50% AMI election, but has not yet received Form 8609, MSHDA will consider requests to utilize the Income Averaging election on a case-by-case basis and required to meet certain requirements."</p>
Minnesota	Guidelines	Yes	<p>Income Averaging Guidance Dated 01/08/19 states: "Minnesota Housing will accept proposals for the use of income averaging for new 9% and 4% HTC projects and for 9% and 4% projects already approved by Minnesota Housing in prior funding rounds subject to the requirements outlined below.</p> <p>PART 1: Requirements and Supporting Documentation for all Income Averaging Proposals</p> <ul style="list-style-type: none"> • Projects are eligible to select income averaging provided they have not filed Form 8609 with the IRS. • Syndicator/Investor letter of approval referencing the specific rent and income tiers is required. • Permanent lender(s) letter of approval referencing the specific rent and income tiers is required. • Bond issuer letter of approval referencing the specific rent and income tiers is required. If Minnesota Housing is the bond issuer, Minnesota Housing approval is required and requests will be considered on a case-by-case basis. Projects must meet Minnesota Housing's Market Study Guidelines as updated for income averaging. • Owners must complete the Minnesota Housing Income Averaging Election/Certification Form and if making a multiple building election, include a draft copy of the Owner's Attachment to Form 8609. • Provide updated information on the rent and income tiers on the Income and Rent Grid Form (based upon the Novogradac form). • Provide updated Multifamily Workbook (if applicable as outlined below). <p>PART 2: Application of Income Averaging by New or Previously Selected Projects</p> <p>A. Previously Selected Projects</p> <p>Minnesota Housing permits income averaging on projects that have previously been selected or received a 42M letter, so long as Form 8609 has not yet been filed with the IRS. Minnesota Housing's requirements are set out in this guidance for HTC Only projects and HTC projects with Minnesota Housing deferred financing. Future guidance will be provided regarding HTC projects that include a Minnesota Housing first mortgage/LMIR loan. The general requirements that apply to both HTC Only projects and HTC projects with deferred Minnesota Housing financing are as follows:</p> <ul style="list-style-type: none"> • No change in 9% HTC amount • No change in deferred and/or HTC selection criteria or scoring for projects with a Minnesota Housing deferred loan or 9% HTCs • 4% HTC Only projects must continue to meet minimum scoring requirements • Additional Market Study guidance: <ul style="list-style-type: none"> o If the owner is electing income averaging and intends to change rent or incomes as underwritten at the time of selection, provide a supplement to the original Market Study that accounts for the revised Minnesota Housing Market Study guidelines in the revised Chapter 2. o If the owner is electing income averaging, but is not proposing any changes to the rent or income tiers, from what was designated at the time of selection, no updates to the Market Study are required. • Updated Multifamily Workbook for projects that intend to change rents or incomes from what was designated at the time of selection. • Provide updated information on the rent and income tiers on the Income and Rent Grid Form (based upon the Novogradac form). • Income and rent restrictions will be incorporated into, and be a condition of, the deferred loan legal documents for any HTC project with Minnesota Housing financing. • Developments must comply with the requirements of any Minnesota Housing financing. <p>For 2018 RFP/2019 HTC Round 1 HTC selected projects with Minnesota Housing deferred financing: Income averaging is permitted, but no increase in the Minnesota Housing deferred loan is allowed.</p> <ul style="list-style-type: none"> • Changes to the rent and income tiers may be permitted, subject to adequate supporting documentation as required in Part I of this guidance, satisfactory underwriting of the project, and compliance with the requirements of existing Minnesota Housing financing. Developments that are re-underwritten may need to go back to the Minnesota Housing Board to seek approval and owners should understand that will require additional time. • Sufficient time must be allowed for Minnesota Housing staff to re-underwrite the project. <p>For 2017 RFP/2018 HTC, 2018 Round 2 and previously selected projects with Minnesota Housing deferred financing: The income averaging election is permitted, but Minnesota Housing will generally not re-underwrite the project or permit a change in the rent or income structure, or to the deferred selection criteria but will consider exceptions for preservation projects and extenuating circumstances on a case by case basis. No increase in the Minnesota Housing deferred loan is allowed."</p>

Updated: 01/18/19

Boston Capital - State Status Regarding Income Averaging

Note: 45 States to date have published their status on the use of Income Averaging
 35 - Yes
 05 - No
 05 - 2019 QAP issued but no reference made to IA

<u>State</u>	<u>Document Type</u>	<u>Income Avg. Approved (Y/N)</u>	<u>Quoted from Notices & QAP</u>
Minnesota (Cont.)	Guidelines	Yes	<p>Income Averaging Guidance Dated 01/08/19 states (Continued):</p> <p>"B. New Applications for HTC Projects</p> <ul style="list-style-type: none"> • Submit all applicable supporting documentation as outlined in Part 1 of this guidance. • Provide the Income and Rent Grid Form (based upon the Novogradac form) if the project is electing single-building project or the development will elect multiple building project and contain more than one project. If the project will elect to treat all buildings as one multiple building project, complete the rent grid in the 2019 version of the Workbook. • New applications are advised to select the income averaging set-aside at the time of application. <p>Submission Process</p> <p>Projects that wish to elect income averaging should submit the required supporting documentation at the following stage:</p> <ul style="list-style-type: none"> • Application: for the 2019 Round 2 HTC or the 2020 Round 1 HTC Application • Carryover Agreement • Application for the issuance of Form 8609 • 42M Application • Other project stage not listed above <p>Income averaging election requests will generally be processed within 60 days and owners should plan accordingly. If additional processing time is needed for underwriting purposes, Minnesota Housing will communicate any change in timeframe with the applicant. Email 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 for projects that do not have a Portal account."</p>
Mississippi	-	-	-
Missouri	Draft Policy	Yes	<p>Draft Policy as of 08/02/18 states:</p> <ul style="list-style-type: none"> • At time of application, a development intending to elect the IA minimum set-aside will: <ul style="list-style-type: none"> - Designate in the application what minimum set-aside election will be made on IRS Form 8609. - Acknowledge the minimum set-aside election made on the application is irrevocable. - Acknowledge that if IA is the minimum set-aside election, the ownership entity must also elect that all buildings in the applicant's development are "part of a multiple building project" on IRS Form 8609. - Submit statements from every non-MHDC funding source acknowledging the intent to operate the development under the IA minimum set-aside. - Submit a statement from the proposed management company, acknowledging the intent to operate the development under the IA minimum set-aside. - Acknowledge that if a development: 1) contains market units (above 80% AMI); and 2) intends to operate the development under the IA set-aside, the development must submit a legal opinion letter before firm commitment that the proposed unit mix is in compliance with the Code. - The market study submitted with the application must affirmatively support the operation of the development under the IA minimum set-aside. • The IA minimum set-aside election will not be allowed for resyndicated developments. • Subject to final Commission approval, the election of the IA minimum set-aside will only be allowed for developments approved under the 2019 Qualified Allocation Plan (QAP) and subsequent QAPs. • Developments that elect the IA minimum set-aside will be subject to an increased per-unit compliance monitoring fee. • The management company for a development that elects the IA minimum set-aside will be required to provide certification of additional training on the IA minimum set-aside prior to lease-up of the development. MHDC will provide future guidance on which trainings are acceptable. • The unit designations will be allowed to float throughout the project, but AMI designation for each unit will remain fixed and will be recorded in the Land Use Restriction Agreement (LURA). <ul style="list-style-type: none"> Example: 10-Unit Project 5 – 50% AMI Units 5 – 70% AMI Units <p>There will always be five, 50% AMI units and five, 70% AMI units in the development, how the units are distributed throughout the buildings may vary during the life of the project.</p> • Skewing the unit configuration, where unit AMI designations are not reasonably distributed throughout the development, will not be allowed in the initial unit designations and throughout the affordability period. • With the allowance of the IA minimum set-aside election, the Workforce Housing Priority as well as the 50% AMI priority will be removed from the 2019 and subsequent QAPs. • The management company shall maintain, and regularly update, a list indicating IA set-aside unit designations. This list will assist in monitoring ongoing minimum set-aside compliance. An up-to-date copy of this list must be made available on site during periodic audits conducted by MHDC."

Updated: 01/18/19

Boston Capital - State Status Regarding Income Averaging

Note: 45 States to date have published their status on the use of
Income Averaging
35 - Yes
05 - No
05 - 2019 QAP issued but no reference made to IA

<u>State</u>	<u>Document Type</u>	<u>Income Avg. Approved (Y/N)</u>	<u>Quoted from Notices & QAP</u>
Montana	Final 2020 QAP	Yes	<p>Final 2020 QAP as of 9/12/18 states: "Income averaging (IA) will be available only to the extent permitted and subject to the procedures, restrictions and other requirements specified by MBOH in future compliance materials." No additional compliance materials are available regarding Income Averaging as of 01/18/19</p>
Nebraska	Final 2019 QAP	Yes	<p>Final 2019 QAP as of 08/17/18 states: "9.3 INCOME AVERAGING ELECTION At a minimum forty percent (40%) or more of the residential units in the development serve households earning as much as eighty percent (80%) AMI, as long as the development's average income/rent limit is sixty percent (60%) or less of AMI. NIFA is currently developing IA compliance and monitoring policies and will require any development electing IA to comply with such policies. Please note, that as of the date of this Allocation Plan the IRS has not issued full and definitive guidance as to how it will administer or monitor developments making the IA election. Any development that considers such an election should do so in consultation with its counsel and/or tax advisors. NIFA is not espousing or recommending any specific approach to this matter. Income Averaging Affordability Requirements IA is only permitted if all residential units in a development are designated as low-income. Developments selecting IA may not have any unrestricted or market rate residential units. Manager units are not subject to this restriction and are permitted in IA developments. Income and rent levels are restricted to four (4) of the following AMI income brackets: 20% of AMI, 30% of AMI, 40% of AMI, 50% of AMI, 60% of AMI, 70% of AMI, and 80% of AMI. Multi-Building Election If the proposed development contains more than one building, the owner must make the 8b election on Form 8609, indicating that the development will be treated as a multiple building development. Documentation Requirements The market study submitted with the LIHTC Application, must demonstrate sufficient market demand for each AMI income bracket proposed. Equity and debt commitment letters must affirmatively demonstrate that they are based upon an IA set-aside. NIFA reserves the right to require a legal opinion verifying the ability of a development to utilize IA in combination with any other subsidy. Design Requirements Units of similar size and configuration must have substantially similar design and be reasonably distributed throughout the building(s) regardless of the assigned AMI income bracket restriction. Owners must disperse AMI income bracket levels across unit types in a manner that does not violate fair housing laws. Timing Requirements 2019 Application submittals may select the IA election. Requests from developments that have received an LIHTC/AHTC reservation prior to 2019 and that have not submitted the Final Cost Certification may request the IA election. Such requests must be submitted in writing to NIFA. Requests will be considered at the sole discretion of NIFA only if the overall AMI rent targeting is the same as committed to in the original LIHTC Application. Eligible applicants must select IA at the time of Final Application as indicated in Section 4. NIFA will not permit a change to IA after a development has received a Conditional Reservation of 2019 LIHTC and AHTC."</p>

Updated: 01/18/19

Boston Capital - State Status Regarding Income Averaging

Note: 45 States to date have published their status on the use of
Income Averaging
35 - Yes
05 - No
05 - 2019 QAP issued but no reference made to IA

<u>State</u>	<u>Document Type</u>	<u>Income Avg. Approved (Y/N)</u>	<u>Quoted from Notices & QAP</u>
Nevada	Policy	Yes	<p><u>Income Averaging Policy as of November 2018 states:</u></p> <p>"NHD requirements:</p> <ul style="list-style-type: none"> • Resyndication of properties with a recorded Declaration of Restrictive Covenants (DRC) is ineligible. • 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. • Owners will need NHD approval (using the Project Concept Change process) to change designations prior to the property reaching full occupancy. • The recorded DRC will contain a general provision regarding the election but will not list unit designation specifics. • 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). • NHD will monitor properties' compliance at least annually. The monitoring fee is \$45 per unit, annually. • Leasing to an over-income household or exceeding the maximum housing expense does not automatically increase a unit's percent designation. • Absent IRS guidance to the contrary, NHD 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. • Properties with market rate units will not be eligible for income averaging election. Only 100% restricted properties can utilize this election. • The NAU rule is triggered if the tenant's income exceeds: <ul style="list-style-type: none"> - 140% of 60% AMI, if the income target for the over-income unit is 60% AMI or less, or - 140% of the designated income target, if the income target for the over-income unit is more than 60% AMI. • In general, income and rent restrictions in the "next available" comparable or smaller unit must be based on: <ul style="list-style-type: none"> - The imputed income limit applicable to the unit that is currently occupied by the over-income tenant, if the comparable or smaller unit is a market-rate unit, or - The imputed income limit applicable to the "next available" unit itself, if it is already a LIHTC unit. <p>Requests to change set-aside must include the following:</p> <ul style="list-style-type: none"> • An updated NHD Application reflecting all designations/changes. • A matrix showing the AMI percentage(s) for each designated unit type. • 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). • A statement from permanent lenders and the equity provider acknowledging income averaging. • A new or revised market study showing adequate demand for all possible combinations of unit sizes and percent limits. • Statement committing to annual income averaging training for on-site property managers. <p>9% Credit Applications Income averaging will not be available for any 9% tax credit projects.</p> <p>4% Tax Exempt Bonds/4% Credit Applications The Act did not change IRC Section 142, which includes multifamily Housing Bonds. However, these properties must satisfy both income averaging and one of the elections applicable to tax-exempt financing (20 at 50 or 40 at 60)."</p>

Updated: 01/18/19

Boston Capital - State Status Regarding Income Averaging

Note: 45 States to date have published their status on the use of Income Averaging
 35 - Yes
 05 - No
 05 - 2019 QAP issued but no reference made to IA

<u>State</u>	<u>Document Type</u>	<u>Income Avg. Approved (Y/N)</u>	<u>Quoted from Notices & QAP</u>
New Hampshire	Policy	Yes	<p><u>Policy dated 12/06/18 states:</u> "General Guidelines and Requirements Eligible Projects</p> <ul style="list-style-type: none"> • Projects applying for either 9% or 4% LIHTCs will be permitted to elect the IA minimum set-aside. • Projects with a recorded Land Use Restriction Agreement ("LURA") will not be permitted to elect the IA 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. • 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 IA. <p>Requirements for Income Averaging</p> <ul style="list-style-type: none"> • Income averaging will be limited to projects that reserve 100% of the total units to LIHTC affordability. • 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). • 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 IA 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. • 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. • 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. • 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 IA) are not the same as the extremely low income rent and income restrictions under the federal Housing Trust Fund and Section 8 programs. • Owners electing IA will be required to complete an annual recertification for each household in accordance with New Hampshire Housing's Tenant Certification Requirements. • The one-time monitoring fee will be increased from \$600 per unit to \$1,000 per unit for any project that elects IA. The Authority reserves the right to adjust the monitoring fee based on actual experience as IA is implemented. • If a project fails to meet the income averaging set-aside, the noncompliance will be reported on IRS form 8823. • 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 IA. <p>Required Documentation</p> <ul style="list-style-type: none"> • Owners will be required to indicate the set-aside selection and proposed imputed income designations on their application. • A market study supporting the imputed income designations being proposed is required. • 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 IA. • 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/lowincome-housing-tax-credits. <p>Liability</p> <ul style="list-style-type: none"> • 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."

Boston Capital - State Status Regarding Income Averaging

Updated: 01/18/19

Note: 45 States to date have published their status on the use of Income Averaging
 35 - Yes
 05 - No
 05 - 2019 QAP issued but no reference made to IA

State	Document Type	Income Avg. Approved (Y/N)	Quoted from Notices & QAP
New Jersey	Draft 2019/2020 QAP	Yes	<p><u>Email on 06/07/18 states:</u> "9% Applicants will NOT be permitted to underwrite assuming the new "Average Income" minimum set-aside election in 2018, due to the regulatory process required to amend the Qualified Allocation Plan (QAP). All 2018 applicants must select either the 20% at 50% or 40% at 60% minimum set-aside and adhere to current underwriting parameters (units underwritten above 60% of Area Median Income will be treated as market rate or unrestricted). After award, owners should notify the NJ Housing and Mortgage Finance Agency (Agency) with any substantive changes to the project, including a requested change in minimum set-aside by no later than carryover/ binding commitment. In order to formally approve and implement the new minimum set-aside, the Agency is preparing amendments to the QAP, which will permit sponsors to select the new "Average Income" minimum set-aside in future tax credit applications."</p> <p><u>Draft 2019/2020 QAP dated 9/20/18 states:</u> "Average Income set-aside" means an election made by the taxpayer on IRS Form 8609 which requires that the income designations of at least 40 percent of the units in a housing project average 60 percent or less of area median income (AMI). For underwriting purposes, the average of all income designations of tax credit eligible tenants shall not exceed 57.5 percent of AMI. Designated income/rent levels for tax credit-eligible units may only be set at 10 percent increments ranging from 20 percent of AMI up to 80 percent of AMI and may not be amended without NJHMFA approval. All Federal minimum set-aside elections are irrevocable. "</p>
New Mexico	Final 2019 QAP	Yes	<p><u>Final 2019 QAP dated 12/27/18 states:</u> "Income Averaging (IA) Election: This election under Section 42 of the IRS Code was authorized by the Consolidated Appropriations Act of 2018. This set-aside allows the Project to serve households up to 80 percent AMI (80%) as long as at least 40 percent of the total units are rent and income restricted and the average income limit for all tax credit units in the Project is at or below 60 percent AMI (60%).</p> <ul style="list-style-type: none"> • The following applies for this election: <ul style="list-style-type: none"> o Projects cannot be an existing LIHTC project. o Income and rent limits must be in ten percent increments, and may include 20 percent AMI (20%), 30 percent AMI (30%), 40 percent AMI (40%), 50 percent AMI (50%), 60 percent AMI (60%), 70 percent AMI (70%), or 80 percent AMI (80%). • The average of the imputed income limitations designated cannot exceed 60% AMI. • All units must be designated with a specific AMI percentage at the time of application. • Unit designations may float, but are subject to the Next Available Unit Rule and the original designations must be maintained throughout the Affordability Period. Income averaging applies to rent and income limits. If a unit has a designated limit of 80% AMI, the maximum rent that can be charged to a household for that unit is 30% of 80% of AMI. Similarly, if a unit has a limit of 40% AMI, the maximum rent that may be charged is 30% of 40% of AMI. • Skewing of unit designations is not permitted. Project Owners must disperse unit types across chosen rent/income limits in a way that does not violate Fair Housing. MFA will require reasonable parity between different bedrooms sizes at each income band utilized on the Project. • The MFA-ordered market study must demonstrate sufficient need at each income level chosen. • Project Owners of projects with more than one building must elect to treat all of them as part of a multiple building project (checking "Yes" on line 8b of the 8609 form). • IA Projects may be subject to an increased compliance monitoring fee. • The MFA shall only accept an Application that chooses the IA election if all units in the Project are rent-restricted to and occupied by households whose income is at or below 80% of AMI. In other words, the MFA will not accept an Application that chooses the IA election if the Project includes unrestricted, market rate units. • An Application for an IA Project must include within its equity and debt commitment letters confirmation of the utilization and approval of Income Averaging. <p>The changes to the IRS Code described above do not extend to the set-aside requirements associated with the issuance of tax-exempt bonds in accordance with Section 142 of the IRS Code. Projects that receive an allocation of 4% LIHTC in conjunction with an issuance of tax exempt bonds must meet the set-aside requirements of both Section 42 and Section 142 of the IRS Code. The 30% AMI income and rent level under the LIHTC is not the same as the Extremely Low Income and rent restriction under the National Housing Trust Fund (NHTF). The NHTF statute and regulation define "Extremely Low Income" as the greater of 30% of AMI or the federal poverty line for applicable household size. Income Averaging unit designation is based solely on AMI. Projects that have layered NHTF with LIHTC should be mindful of this difference. The IRS makes the ultimate determination regarding whether or not the Project is in compliance with this and/or any other election made by the Project Owner. Acceptance by MFA does not guarantee acceptance by the IRS. Project Owners should consult with their legal counsel. These requirements are subject to change in the event the IRS issues further guidance on Income Averaging.</p> <p>Only low income units as determined by the Project's set-aside election are eligible for tax credits. For example, if the 20/50 Election is chosen, only units that are rent restricted and set aside for tenants whose income does not exceed 50 percent of Area Gross Median Income are qualified as low income units. If the 20/50 Election is chosen, units with income and rent limits above 50 percent of Area Gross Median Income are not eligible for tax credits. Similarly, if the IA Election is chosen, only units that are rent restricted and set aside for tenants whose income does not exceed 80 percent of Area Gross Median Income are qualified as low income units. The minimum set-aside election is irrevocable under the Code. "</p>

Updated: 01/18/19

Boston Capital - State Status Regarding Income Averaging

Note: 45 States to date have published their status on the use of Income Averaging
 35 - Yes
 05 - No
 05 - 2019 QAP issued but no reference made to IA

<u>State</u>	<u>Document Type</u>	<u>Income Avg. Approved (Y/N)</u>	<u>Quoted from Notices & QAP</u>
New York	-	-	-
New York City	Draft 2018 QAP	No	<p><u>Draft 2018 QAP states:</u> "An Income Averaging option was adopted by Congress through the Consolidated Appropriations Act of 2018 in March 2018. HPD anticipates making technical clarifications later in 2018 regarding this new option"</p>
North Carolina	Final 2019 QAP	Yes	<p><u>Final 2019 QAP states:</u> "INCOME AVERAGING Only new construction projects and rehabilitation projects not subject to an existing Declaration of Land Use Restrictive Covenants for Low-Income Housing Tax Credits are eligible to utilize income averaging. Applicants electing to use income averaging must comply with the following: • The income average for the property cannot exceed 60% of area median income, • The income average for any bedroom type cannot exceed 60% of area median income, • Market rate units are prohibited, and • For projects with more than one building, Owners must select that each building is part of a multiple building set-aside on line 8b in Part II of IRS Form 8609."</p>
North Dakota	Final 2019 QAP	Yes	<p><u>Notice on 06/28/18 states:</u> "For projects which have already been awarded a reservation of tax credits, but have not yet placed in service, the following conditions apply: • A switch to IA must not result in a material change to the project's score from the original application • Formal written consent to the change to IA from all lenders and the tax credit equity investor must be provided. An updated market study to support the new unit income mix is required unless the project is merely shifting to some previously designated 60% AMI units to 70% or 80% AMI designations with no commensurate increase to the proposed rents. • A request to switch to IA is initiated by submission of a revised TC application and exhibit A spreadsheet 4% LIHTC and Tax Exempt Bonds: Federal regulations related to tax- exempt bonds, found in 26 Unites States Code Section 142, was not amended to include IA provisions. Therefore, for tax-exempt bond eligibility under Section 142, a project must still meet one of the existing minimum set-asides of "20 at 50" or "40 at 60". However, the project may also elect IA for purposes of the 4% LIHTC allocation. Therefore, an IA project having both 4% LIHTC and tax-exempt bonds must meet the IA minimum set-aside as well as one of the "20 at 50" or "40 at 60" minimum set-asides in order to be compliant for both tax credit and bond programs. Resyndication Applications: Properties seeking LIHTCs for resyndication of previously awarded tax credit properties are not eligible to select the IA set-aside unless the project has completed its extended use period and is no longer in the LIHTC program."</p> <p><u>Final 2019 QAP states:</u> "Income and Rent Restrictions: In order to be eligible for low income housing tax credits, a project must elect one of the following basic income and rent restrictions, known as "minimum set-asides": (1) 20 percent or more of the residential units are both rent-restricted and occupied by households with incomes of 50 percent or less of Area Median Income (AMI); (2) 40 percent or more of the residential units are both rent-restricted and occupied by households with incomes of 60 percent or less of AMI; or, (3) 40 percent or more of the residential units are both rent-restricted and occupied by households with incomes of 80 percent or less of AMI, so long as the average income and rent restriction of the LIHTC units in the property does not exceed an average of 60 percent AMI. This is referred to as the Income Averaging (IA) set-aside. • The designated income and rent limitation of LIHTC units under IA shall be assigned in 10 percent increments: 20 percent, 30 percent, 40 percent, 50 percent, 60 percent, 70 percent, and 80 percent AMI. • Only available on projects with an applicable fraction of 100 percent and no units which are unrestricted or designated above 80 percent AMI. Employee units are not included in the applicable fraction and are permitted in IA developments. • Projects with multiple residential buildings must answer "Yes" to question 8b on IRS Form 8609, thereby designating the development as a multiple building project. • IA is not available on resyndication projects which have not yet completed their original extended use period and exited the LIHTC program. • IA does not apply to Section 142 which regulates tax-exempt bond financing. Therefore, tax-exempt bond financed projects electing IA must meet the requirements of both IA as well as one of the other two minimum set-asides listed in this section."</p>

Updated: 01/18/19

Boston Capital - State Status Regarding Income Averaging

Note: 45 States to date have published their status on the use of
Income Averaging
35 - Yes
05 - No
05 - 2019 QAP issued but no reference made to IA

<u>State</u>	<u>Document Type</u>	<u>Income Avg. Approved (Y/N)</u>	<u>Quoted from Notices & QAP</u>
Ohio	Income Averaging Policy (IA Waiver Form)	Yes	<p><u>Income Averaging Acknowledgement Form; Exhibit A: Income Averaging Policy states:</u> "Applicants electing the Income Averaging (IA) option acknowledge OHFA is currently developing application, compliance, and monitoring policies for IA developments and agrees to adhere to all such policies, including any changes to the following requirements that may be necessary to conform to governing law or regulation.</p> <p>Affordability Requirements: IA is only permitted if all residential units are designated low-income; developments selecting this option may not contain any unrestricted or market-rate residential units. Manager units are not subject to this restriction and are permitted in IA developments. Developments that condominiumize market-rate units into a legally distinct, non-HTC development may utilize IA in the HTC development only. For Competitive applications only, at least 40 percent of all units must be affordable to and occupied by persons earning 60 percent AMI or less. Additional affordability requirements may be triggered to qualify for competitive consideration, basis boost, developer fee supplements, or HDAP or other OHFA financing. Non-competitive developments may elect IA provided they simultaneously meet affordability requirements set forth IRC §142. Additional affordability requirements may be triggered to qualify for HDAP or other OHFA financing.</p> <p>Multi-Building Election: If the proposed development contains more than one building, the project must make the 8b election on the 8609 form indicating that it will be treated as a multiple building project. Applicants may seek an exception to this requirement, separate projects will only be permitted upon demonstration of a compelling need as determined in OHFA's discretion.</p> <p>Documentation Requirements: The market study must demonstrate sufficient market demand for each income bracket proposed. Equity and debt commitment letters must affirmatively demonstrate that they are based upon an IA set-aside. OHFA reserves the right to require a legal opinion verifying the ability to utilize IA in combination with any other subsidy.</p> <p>Design & Architectural Requirements: Units of similar size and configuration must have substantially similar design and be reasonably distributed throughout the building(s) regardless of the assigned income restriction.</p> <p>Resyndication Restrictions: If an applicant proposes using the IA option at resyndication, it may not increase the rent- or occupancy restrictions for any units presently subject to a Restrictive Covenant.</p> <p>Timing to Opt Into IA: Newly Proposed Developments: If using the IA option, developments must select IA at both proposal and final application; OHFA will not permit IA at either carryover or 8609 if the application was not previously underwritten to that test. With prior written approval from OHFA, OHFA may permit developments that were previously underwritten to IA standards to select the 60-40 or 50-20 tests after final underwriting. Previously Approved Developments: Developments may not elect IA if OHFA already provided an 8609 form, regardless of whether that form was executed by the owner. Projects that already recorded a Restrictive Covenant may not alter the rent and/or income restrictions.</p> <p>Program Compliance Issues: All IA developments must submit Annual Owner Certifications and/or any other periodic compliance requirements that may be required as this policy is further developed. All tenants in IA developments must submit annual income certifications.</p> <p>Underwriting Fee: Any development approved for tax credit funding prior to 2018 will be assessed a one-time re-underwriting fee of \$5,000.00 if it makes any changes to the rent and/or income restrictions."</p> <p><u>Important Updates to Highlight as of 9/20/18:</u> For projects housing 60-80% AMI tenants in rent-restricted units, at least 50% of rent-restricted units must be affordable for tenants with incomes under 60% AMI.</p>

Updated: 01/18/19

Boston Capital - State Status Regarding Income Averaging

Note: 45 States to date have published their status on the use of
Income Averaging
35 - Yes
05 - No
05 - 2019 QAP issued but no reference made to IA

State	Document Type	Income Avg. Approved (Y/N)	Quoted from Notices & QAP
Oklahoma	2018 QAP Amendment & Final 2019 QAP	Yes	<p>Amendment to 2018 QAP states: "Income Averaging is available to developments making their minimum set-aside election after March 23, 2018. • 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 income averaging 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 be required to complete annual re-certifications. • 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.</p> <p>Tax Exempt Bonds/4% Credit Applications The Act modifies IRC Section 42 to allow for income averaging, but does not make a similar change in IRC Section 142, which covers exempt facility bonds, including multifamily Housing Bonds. However, income averaging may be used in bond-financed Housing Credit developments so long as the development satisfies both the income averaging 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.</p> <p>Resyndication Applications Any property seeking 9% or 4% credits for resyndication 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 resyndication. Given the complexity of complying with two separate minimum set-aside rules, OHFA has decided not to allow income averaging for such resyndications.</p> <p>Rehabilitation Properties Applications must consider relocation impact in setting percentages for occupied rehab properties."</p> <p>Final 2019 QAP states: "OHFA Adopted Requirements for Income Averaging: • 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 income averaging 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 be required to complete annual re-certifications. • 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.</p> <p>Tax Exempt Bonds/4% Credit Applications The Act modifies IRC Section 42 to allow for income averaging, but does not make a similar change in IRC Section 142, which covers exempt facility bonds, including multifamily Housing Bonds. However, income averaging may be used in bond-financed Housing Credit developments so long as the development satisfies both the income averaging 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.</p> <p>Rehabilitation Properties Applications must consider relocation impact in setting percentages for occupied rehab properties.</p> <p>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 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."</p>

Updated: 01/18/19

Boston Capital - State Status Regarding Income Averaging

Note: 45 States to date have published their status on the use of Income Averaging
 35 - Yes
 05 - No
 05 - 2019 QAP issued but no reference made to IA

<u>State</u>	<u>Document Type</u>	<u>Income Avg. Approved (Y/N)</u>	<u>Quoted from Notices & QAP</u>
Oregon	Notice	No	<p><u>Notice on 04/16/18 states:</u> "OHCS is working diligently to develop and implement State policies around this new provision."</p>
Pennsylvania	2019/2020 Policy	Yes	<p><u>2019-2020 Income Averaging Policy from August 2018 states:</u> "In June 2018, the Agency issued Interim Guidance which specifically stated that developments that have already been "placed in service" or that have previously elected a minimum set-aside are not eligible for income averaging ("IA"). Furthermore, it provided that all projects currently in the pipeline (including those holding a preliminary determination of eligibility) have been ranked and selected for processing based on the project characteristics and selection criteria will not be considered. The Agency will not accept a modification request for these developments to permit use of IA. Underwriting and funding assumptions have already been performed using original projections and market studies have been reviewed based on original unit and income projections. The Agency is permitting use of IA prospectively for new tax credit applications. The 2019- 2020 Allocation Plan for Low Income Housing Tax Credits permits the utilization of IA provided that one hundred percent (100%) of the units are be affordable to persons at or below 80% AMI or less as long as the average development income and rent limit is 60% AMI. Developments may not contain unrestricted or market rate residential units (manager units are excluded). In order to include IA in a development, applications must: • Contain no more than four (4) income targets; • Have no more than ten percent (10%) of the units in excess of 60% AMI (while still maintaining an overall less than 60% development AMI); • Specify the income targets in 10% increments (ie, at or below 20% AMI, 30% AMI, 40% AMI, 50% AMI, 60% AMI, 70% AMI, and 80% AMI). • Reasonably distribute units of similar size and income targeting throughout the property regardless of assigned income restrictions; • Provide a market study evidencing demand for each proposed targeted incomes; • Demonstrate management agent capacity/experience to implement IA; • Not change income targets after application (development may elect 20/50 or 40/60 set aside post award); • Make the 8b election on the IRS Form 8609 form indicating that it will be treated as a multiple building project (for multiple building proposals). • Preservation applications may not utilize income targeting for units subject to an existing Indenture of Restrictive Covenants; • Provide equity and financing commitment letters specifically confirming approval of Income Averaging; and • Not reject tenancy from a person holding a Section 8 voucher regardless of income target. If the development elects IA, an additional compliance monitoring fee of \$500 will be assessed for all units in the property. All IA developments must execute an Income Averaging Policy Acknowledgement (attached). Additionally, owner must submit Annual Owner Certifications and/or any other periodic compliance requirement that may be required as this policy is further developed (and IRS or Treasury guidance evolves). All tenants in IA developments must submit annual income certifications." <u>Important Updates to Highlight as of 9/20/18:</u> For projects electing IA, only up to 10% of units can be designated for units above the 60% AMI threshold.</p>

Updated: 01/18/19

Boston Capital - State Status Regarding Income Averaging

Note: 45 States to date have published their status on the use of
Income Averaging
35 - Yes
05 - No
05 - 2019 QAP issued but no reference made to IA

<u>State</u>	<u>Document Type</u>	<u>Income Avg. Approved (Y/N)</u>	<u>Quoted from Notices & QAP</u>
Rhode Island	Notice	Yes	<p>Notice on 07/09/18 states: "RI Housing will implement the following requirements for Income Averaging: • No development that has closed and has a recorded Declaration of Land Use Restrictive Covenants (the "Tax Credit LURA") can change their targeting to incorporate Income Averaging. • Any new production development that has not closed as of issuance of this Program Bulletin and does not have a recorded Tax Credit LURA, is eligible to implement Income Averaging. • Owners that elect Income Averaging must have an average income targeting that does not exceed 58% AMI. The purpose of this provision is to ensure that developments remain in compliance with the federal maximum requirement of 60% AMI under Income Averaging. • RI Housing reserves the right to disallow any clear unit skewing by unit size. RI Housing will require applicants to provide reasonable parity between different bedroom sizes at each targeted income band utilized in the development. • Income Averaging will only be permitted in a development if all residential units are designated low-income and the development does not contain any market-rate residential units. Low-income, for this purpose is defined as units affordable to persons earning 80% of AMI or less. • Owners of developments with more than one building must indicate 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). • Any development seeking to implement Income Averaging must be able to demonstrate that: - The proposed rents are achievable based on a RI Housing commissioned appraisal and are strongly encouraged to underwrite at rents that are less than the maximum 80% rents. - The limited partner has approved the proposed Income Averaging and this is reflected in their Letter of Intent and LPA. - The borrower incorporates Income Averaging into their tenant selection plan and other related management documents. - The selected property manager has demonstrated the ability to effectively manage properties subject to federal housing compliance regulations. The property manager must disclose any noncorrected 8823 findings currently outstanding on properties in their portfolio as well as all open Management and Occupancy Reviews with an unsatisfactory or failing compliance score. RI Housing reserves the right to deny the implementation of Income Averaging at its discretion, solely based upon previous compliance related performance of the property manager • Properties that elect the Income Averaging set-aside are subject to additional education requirements for property management staff and additional third-party reporting requirements to RI Housing. • Prior to closing, Owners must provide a matrix showing the designated AMI percentage(s) by unit size. Owners are encouraged to let the units float to ensure overall compliance. • RI Housing reserves the right to charge a higher tax credit monitoring fee for developments that elect Income Averaging. 4% Tax Exempt Bonds/4% Credit Applications: RI Housing will permit the Income Averaging option only for 4% tax credit applications that have not yet closed and signed a LURA. The Act modifies Internal Revenue Code ("IRC") Section 42 to allow for Income Averaging, but does not make a similar change in IRC Section 142, which covers tax exempt facility bonds, including multifamily housing bonds. However, Income Averaging may still be used in bond-financed LIHTC developments so long as the development satisfies both the Income Averaging 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. Resyndication Applications: Any property seeking tax credits for resyndication of previously awarded tax credit properties will not be eligible to select the Income Averaging set-aside. The IRS has issued no guidance regarding this issue, however, the election of new income targeting would negate obligations under an existing 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 resyndication. Given the complexity of complying with two separate minimum set-aside rules, RI Housing has decided not to allow Income Averaging for such resyndications."</p>

Boston Capital - State Status Regarding Income Averaging

Updated: 01/18/19

Note: 45 States to date have published their status on the use of Income Averaging
 35 - Yes
 05 - No
 05 - 2019 QAP issued but no reference made to IA

<u>State</u>	<u>Document Type</u>	<u>Income Avg. Approved (Y/N)</u>	<u>Quoted from Notices & QAP</u>
South Carolina	Notice	No (Until 2019)	<p><u>Notice dated 04/23/18 states:</u> "At this time, Authority staff is reviewing guidance provided and participating in webinars regarding the implementation of income averaging in its tax credit program. However, until such time as the Authority sets a policy, modifies documents and forms, and provides compliance monitoring training on income averaging, the Authority will not allow developments already submitted for funding consideration or under construction or starting rehabilitation to be eligible for the income averaging election. If the Authority determines that income averaging will be an eligible election in its tax credit program, policies and specific guidelines for income averaging will be included in the 2019-2020 Qualified Allocation Plan (QAP) and Tax Credit Compliance Manual." The 2019-2020 QAP is available on South Carolina's Housing website. There is no mention of income averaging as of 01/18/19</p>
South Dakota	Correspondence from third party & Policy update	Yes	<p><u>07/02/18 Communication to CAH states:</u> "The state is allowing the Income Averaging election for any allocations for the year 2016 and on. A meeting will be held in July for the approval of applications that are intending to change their minimum set-asides. Properties can use Income Averaging if: 1.) Allocation was in 2016 or after 2.) The minimum set-aside on the forms 8609 have not yet been elected and submitted The state is allowing that LURAs may be amended for projected that have already had them recorded"</p> <p><u>The 2019 QAP states:</u> "Note: Units used to meet point requirements may also be used in Income Averaging. However, If units are designated at 30 percent AMI using the Housing Trust Fund (HTF), the Housing Trust Fund units are in addition to the Deep Income Targeting units designated for the above category. HTF income and rents are based on the poverty level which is not the same as the 30 percent AMI limits so be cautious if using HTF units in the Income Averaging process."</p> <p><u>Policy dated 08/01/18 states:</u> "On August 1, 2018, the SDHDA Board of Commissioners approved Resolution 18-08-N, authorizing the use of the Income Averaging set aside for certain HTC Projects that are in the development process. Based on the approved resolution, the following policy for Income Averaging will apply to all future HTC applications. This policy supersedes any Income Averaging information in the 2018-2019 HTC QAP. • Up to 20 percent of the affordable units in the project may be rented to tenants whose incomes are 80 percent or less of the area median income (AMI). • The rents for all units above 60 percent AMI may not exceed the 60 percent AMI rent unless documented and approved by SDHDA. • Owner will only be allowed to increase rents above 60 percent AMI with prior approval from SDHDA. A rent comp study must be provided to document the marketability of the 70 or 80 percent AMI rents. And the rents charged must meet the SDHDA standard of 85 percent of the 70 or 80 percent HTC rent limit for Sioux Falls and Rapid City or 80 percent of the 70 or 80 percent HTC rent limit for all other communities. • The project must maintain the minimum set aside of 40 percent of the units being rented to tenants whose average income is at or below 60 percent AMI. • Designated income levels can only be set at 10 percent increments from 20 percent AMI to 80 percent AMI. • All units for the various AMI levels must be proportionately disbursed among the different unit sizes and buildings. • Once the unit designations have been made, the owner will not be allowed to make additional changes. The unit designations will be disclosed in the Declaration of Land Use Restrictive Covenants. "</p> <p><u>Important Updates to Highlight as of 9/20/18:</u> Units Receiving Housing Trust Fund (HTF) Funding can be included in the IA basis, but these units used in IA cannot be scored as Deep-income Target Scoring on an application.</p>

Updated: 01/18/19

Boston Capital - State Status Regarding Income Averaging

Note: 45 States to date have published their status on the use of
Income Averaging
35 - Yes
05 - No
05 - 2019 QAP issued but no reference made to IA

State	Document Type	Income Avg. Approved (Y/N)	Quoted from Notices & QAP
Tennessee	Draft 2019/2020 QAP	Yes	<p><u>Draft 2019/2020 QAP as of 11/02/18 states:</u></p> <p>"Definition 60% Income Averaging Test - The 60% income averaging test is a minimum set-aside that may be elected by an applicant for Housing Credits. Under this election, at least 40 percent of the units in a Housing Credit development are required to be both rent restricted and occupied by individuals whose incomes do not exceed the imputed income limitation designated by the applicant. This is an irrevocable election made at Initial Application. The average of the imputed income limitation designated cannot exceed 60 percent of AMI. The designated imputed income limitations must be in 10 percent increments as follows: 20 percent, 30 percent, 40 percent, 50 percent, 60 percent, 70 percent, 80 percent.</p> <p>Section 13: Threshold and Minimum Construction Requirements The Initial Application must determine the minimum set-aside test as described in Section 42(g)(1). PREVIOUSLY ALLOCATED BUILDINGS ARE INELIGIBLE FOR THIS TEST.</p> <ul style="list-style-type: none"> • 20-50 test, when 20% or more of the residential units are both rent and income restricted by individuals or households whose income is no greater than 50% of the area median income, • 40-60 test, when 40% or more of the residential units are both rent and income restricted by individuals or households whose income is no greater than 60% of the area median income, or • income averaging test, when 40% or more of the residential units are both rent and income restricted by individuals or households whose incomes do not exceed the imputed income limitation designated in this Initial Application and the average of the imputed income limitations designated do not exceed 60% of the area median income. The designated imputed income limitations are restricted to 10% increments as follows: 20%, 30%, 40%, 50%, 60%, 70% and 80%. Guidance on 60% Income Averaging can be found on the THOMAS Documents page <p>Section 14: Initial Application Scoring For applications proposing a minimum set-aside federal election of 60% Income Averaging up to 5 points</p> <ul style="list-style-type: none"> • A statement from permanent lenders and equity providers (at Final Application) acknowledging 60% Income Averaging for the proposed combinations of unit sizes at percentage income limits. 2.5 points • A market study (at Initial Application and updated at Final Application, if necessary) showing current and adequate demand for all proposed combinations of unit sizes at percentage income limits. 2.5 points
Texas	Notice	Yes	<p><u>Notice on 05/25/18 states (Obtained from Novogradac Resource Center):</u></p> <p>"Amendment Guidelines: A Development that has already received a tax credit award but has not yet made its minimum set-aside election may make an Income Averaging election if it involves no changes to representations made to secure the award. A Development making such an election must provide the Department detailed information on the nature of its Income Averaging election to enable the Department to monitor the Development. If the Income Averaging election would require amending any of the representations made in the Application to secure the award, Board approval of a material amendment will be required under TEX. GOV'T CODE §2306.6712. In addition to addressing the requirements set out in that section, a development requesting any such amendment must provide:</p> <ul style="list-style-type: none"> • A detailed description of their rent limits and how they will apply to their unit types • A current market analysis addressing how the proposed income distribution will align with market areas demographics and impact capture rates • Confirmation from each financing source (syndicator and all lenders and investors, if any, outside of the tax credit syndication) that they have reviewed the proposed changes and find them acceptable and financially feasible with no change in their terms (or, if there are changes, a detailed description of the proposed new terms) and that they are prepared to close without need of any extensions (or, if extensions will be needed, what will they be?). • A graphic configuration of units and rent and income limits for each showing that there will be a distribution that will comply with fair housing laws. <p>Designations can float. By way of example and not limitation, if at Application the owner committed to a mix of 30%, 60% and 80% units with an overall low income percentage of 55%, throughout the affordability period, as long as the overall low income percentage remains at or below 55%, the unit designations can change to any combination of 20%, 30%, 40%, 50%, 60%, 70% or 80%. 100% low income projects that select Income Averaging are neither required nor prohibited from completing annual income recertifications."</p>

Updated: 01/18/19

Boston Capital - State Status Regarding Income Averaging

Note: 45 States to date have published their status on the use of Income Averaging
 35 - Yes
 05 - No
 05 - 2019 QAP issued but no reference made to IA

State	Document Type	Income Avg. Approved (Y/N)	Quoted from Notices & QAP
Utah	Final 2019 QAP	Yes	<p>Final 2019 QAP dated 08/07/18 states: "Projects Electing the Income Averaging Minimum Set-Aside Projects will target rents into any income-restricted level that is an increment of 10, up to 80% of AMI, i.e., 10% AMI, 20% AMI, 30% AMI, 40% AMI, 50% AMI, 60% AMI, 70% AMI, or 80% AMI. Points are determined from the percentage of units in each of the categories described below:</p> <ul style="list-style-type: none"> • The Mid-Rent Range maximum is 60 points when targeting 30% of the restricted units at 40% AMI and 30% of the restricted units at 50% AMI (1 point per percent). • Low-Rent Range maximum is 20 points when targeting 10% of the restricted units at 20% AMI and 10% of the restricted units at 30% AMI (1 point per percent). • Upper-Rent Range maximum is 20 points when targeting 6% of the restricted units at 60% AMI, 6% of the restricted units at 70% AMI, and 8% of the restricted units at 80% AMI. • Unrestricted Units receive a score independent of this section. • Homeless units elected in Part D of Section 8 must be divided between 20% AMI and 30% AMI. • The Low-, Mid-, and Upper-Rent Ranges must each contain a distribution of unit types. If a project will include 1-, 2-, and 3-bedroom units, each rent range must include representation of each. Under the Income Averaging election, AMI designations are permitted to float between units within the project but the total unit mix must be maintained. <p>Applicability to 4% Tax-Exempt Bond Projects Section 142 (tax-exempt bond regulations) was not amended to include income averaging provisions. For eligibility for tax-exempt bonds under Section 142, a project must still meet a 20-50 or 40-60 minimum set-aside. However, for purposes of the 4% credit allocation, the project can elect the Income Averaging option as long as the unit mix selected would also meet either a 20-50 or 40-60 minimum set-aside test for purposes of bond compliance."</p>
Vermont	-	-	-
Virginia	2019 QAP Presentation	Yes	<p>2019 QAP Presentation 07/31/18 states: "• Permitted for all future developments • Will consider projects already approved for funding • Reviewed on a case by case basis VHDA Requirements • 100% Low Income – No Market Units • Yes, on Line 8b of the 8609 Form Multiple Building Election • Initial Unit Mix Showing the Average Set-Aside must be provided • Forfeit Qualified Contract Option Other Considerations • Tax Credit Developments in the Ext. Use Period May Elect This Minimum Set-Aside • Existing EUA Will Not be Terminated or Amended • Assigned Unit Set-Asides Must Float • Must Have a Reasonable Distribution of Set-Asides Across All Unit Sizes • Limited Use of Project Based Rental Assistance (PBRA) for the Deeper Set-Asides • Calculation of Income & Rent Based Upon Published MTSP 50% AMI Limits • Property Management Software Enhancements"</p> <p>The 2019-2020 QAP is available on Virginia's Housing website. There is no mention of income averaging as of 01/18/19</p>

Updated: 01/18/19

Boston Capital - State Status Regarding Income Averaging

Note: 45 States to date have published their status on the use of
Income Averaging
35 - Yes
05 - No
05 - 2019 QAP issued but no reference made to IA

State	Document Type	Income Avg. Approved (Y/N)	Quoted from Notices & QAP
Washington	2019 Final Policy	Yes	<p><u>On 07/13/18 NCSHA stated on their website:</u> "WSHFC Guidance Timeline and eligibility: <ul style="list-style-type: none"> • Only projects that have not yet signed a regulatory agreement and have not placed in service can choose Income Averaging. • We are not changing our application process for the June 2018 9% LIHTC competition. We do not expect June projects to be structured with Income Averaging, 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 Income Averaging on a case-by-case basis. Developers who would like to choose Income Averaging for a project must take the following steps. Also note: Income averaging must not create any material change to the points or structure of the project per its application or allocation. <ul style="list-style-type: none"> • Submit a plan and unit configuration, using the attached or linked spreadsheet created by Novogradac, showing that the unit configuration meets the Income Averaging 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." <u>2019 9% Tax Credit Policy states:</u> "The Tax Credit Program includes two low-income housing Commitments: (i) the minimum low-income housing commitment required by Section 42 of the Code and (ii) the Additional Low-Income Housing Commitment, a voluntary election under the Commission's Allocation Criterion. Both Commitments are made when the Application is submitted and are irrevocable and binding upon the Applicant and the Applicant's successors in interest. The Applicant must choose one of the following minimum low-income housing commitments: <ul style="list-style-type: none"> • at least 40% of the total housing units in a project must be rented to residents with incomes at or below 60% of the AMI adjusted for household size; or • at least 20% of the total housing units in a project must be rented to residents with incomes at or below 50% of the AMI adjusted for household size. Income Averaging - allows units to serve households earning as much as 80% of the AMI as long as the average income/rent limit in the property is 60% or less of AMI The income limits for the selected minimum low-income housing commitment apply to any low-income housing unit in the project. Each low-income housing unit must be rent-restricted, with the maximum gross rent not to exceed 30% of the applicable AMI. Criteria for Income Averaging: allowed on a "case by case" basis with the following: <ul style="list-style-type: none"> • Submit a plan and unit configuration, using the spreadsheet created by Novogradac, showing that the unit configuration meets the income averaging; all buildings must have the same election • Get written agreement from the investor and any other public or private funders; • Market study would need to address income mix • Commit and agree in writing to the compliance implications, as we understand them at the time of commitment • Not available for re-syndications or mixed income projects (with market rate units) In addition, if the Applicant voluntarily selects an Additional Low-Income Housing Commitment, the Applicant is making a Commitment that may involve a lower percentage of AMI for all or a selected portion of the total low-income housing units in the project. These housing units must be rented for no more than 30% of the applicable AMI. If the Applicant makes a Commitment to have an applicable fraction of 100%, then 100% of the total housing units in the project will be rent-restricted and rented to qualified low-income residents at the applicable AMI of the minimum low-income housing commitment." </p> <p><u>2019 4% Bond Tax Credit Policy states:</u> "The Applicant must choose one of the following minimum low-income housing commitments: <ul style="list-style-type: none"> • at least 40% of the total housing units in a project must be rented to residents with incomes at or below 60% of the AMI adjusted for household size; or • at least 20% of the total housing units in a project must be rented to residents with incomes at or below 50% of the AMI adjusted for household size. Income Averaging - allows units to serve households earning as much as 80% of the AMI as long as the average income/rent limit in the property is 60% or less of AMI The income limits for the selected minimum low-income housing commitment apply to any low-income housing unit in the project. Each low-income housing unit must be rent-restricted, with the maximum gross rent not to exceed 30% of the applicable AMI. Criteria for Income Averaging: allowed on a "case by case" basis with the following: <ul style="list-style-type: none"> • Submit a plan and unit configuration, using the spreadsheet created by Novogradac, showing that the unit configuration meets the income averaging; all buildings must have the same election • Get written agreement from the investor and any other public or private funders; • Market study would need to address income mix • Commit and agree in writing to the compliance implications, as we understand them at the time of commitment • Not available for re-syndications or mixed income projects (with market rate units)" </p>

Updated: 01/18/19

Boston Capital - State Status Regarding Income Averaging

Note: 45 States to date have published their status on the use of Income Averaging
 35 - Yes
 05 - No
 05 - 2019 QAP issued but no reference made to IA

<u>State</u>	<u>Document Type</u>	<u>Income Avg. Approved (Y/N)</u>	<u>Quoted from Notices & QAP</u>
West Virginia	Novogradac Email	No	<p><u>On 06/11/18 Novogradac stated on their website:</u> "The Housing Development Fund said in an email that it does not anticipate permitting IA in 2018."</p>
Wisconsin	2017/2018 Amendment & 2019/2020 QAP	Yes	<p><u>2017/2018 QAP Amendment #1 on 07/16/18 states:</u> "The following criteria will be used to underwrite applications for federal and state 4% tax credits: The Consolidated Appropriations Act of 2018 created a third minimum set-aside option for tax credit properties. In addition to the existing options to set-aside a minimum of 20% of units for households at or below 50% of County Median Income or a minimum of 40% of units for households at or below 60% of County Median Income, the Internal Revenue Code now allows an option to set-aside a minimum of 40% of units for households with an average income of no more than 60% of CMI. The new provision allows households as high as 80% CMI to qualify as a low-income household. WHEDA will accept 4% federal and state HTC applications that include low income units from 20% CMI to 80% CMI, provided that the average does not exceed 60% of CMI. - Applications electing the Income Averaging option must be 100% low-income. Properties with market rate units will be required to select the 20% @ 50% CMI or 40% at 60% CMI set-aside option. - Low Income units at or above 60% of CMI may not exceed 95% of the LIHTC rent limit, and may not exceed 90% of estimated market rents (as listed in the market study)"</p> <p><u>2019/2020 QAP on 07/12/18 states:</u> "Underwriting Criteria The following criteria will be used to underwrite applications for federal and state 4% tax credits: Income Averaging. The Consolidated Appropriations Act of 2018 created a third minimum set-aside option for tax credit properties. In addition to the existing options to set-aside a minimum of 20% of units for households at or below 50% of County Median Income or a minimum of 40% of units for households at or below 60% of County Median Income, the Internal Revenue Code now allows an option to set-aside a minimum of 40% of units for households with an average income of no more than 60% of CMI. The new provision allows households as high as 80% CMI to qualify as a low-income household. WHEDA will accept 4% HTC applications that include low income units from 20% CMI to 80% CMI, provided that the average does not exceed 60% of CMI. a. Applications electing the Income Averaging option must be 100% low-income. Properties with market rate units will be required to select the 20% @ 50% CMI or 40% at 60% CMI set-aside option. b. Low Income units at or above 60% of CMI may not exceed 95% of the HTC gross rent limit, and may not exceed 90% of estimated market rents (as noted in the market study)"</p>
Wyoming	N/A	N/A	The 2019 QAP is available on Wyoming Housing's website. There is no mention of income averaging in the current 2019 QAP as of 01/18/19.
Puerto Rico	-	-	-
US Virgin Islands	-	-	-
Guam	-	-	-