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DEPARTMENT OF BUSINESS & INDUSTRY
HOUSING DIVISION
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Nevada Housing Division Income Averaging Policy

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

A. The following are federal statutory requirements:

1. Under Internal Revenue Code (IRC) Section 42(g)(1)(C)(ii)(I) owners designate the income and rent limitation of each unit. These designations must average 60%; owners do not need to maintain an average among tenant household incomes.
2. The designated levels may be only 20%, 30%, 40%, 50%, 60%, 70%, and/or 80% of AMI.
3. The election is irrevocable once made on Form 8609.
4. Under IRC § 42(g)(1)(C)(i) a property is qualified when 40% or more of the total units:
 - o are rent restricted to and
 - o occupied by households at or below the limitation designated with respect to the unit.
5. IRC § 42(g)(2)(D)(iii) contains a distinct Next Available Unit Rule (NAUR) for income averaging.

B. NHD requirements:

1. Resyndication of properties with a recorded Declaration of Restrictive Covenants (DRC) is ineligible.
2. 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.
3. Owners will need NHD approval (using the Project Concept Change process) to change designations prior to the property reaching full occupancy.
4. The recorded DRC will contain a general provision regarding the election but will not list unit designation specifics.
5. 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).
6. NHD will monitor properties' compliance at least annually. The monitoring fee is \$45 per unit, annually.
7. Leasing to an over-income household or exceeding the maximum housing expense does not automatically increase a unit's percent designation.

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8. 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.
9. Properties with market rate units will not be eligible for income averaging election. Only 100% restricted properties can utilize this election.
10. The NAU rule is triggered if the tenant's income exceeds:
 - 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.
11. In general, income and rent restrictions in the "next available" comparable or smaller unit must be based on:
 - 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.

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

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

D. 9% Credit Applications

Income averaging will not be available for any 9% tax credit projects.

E. 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).

NHD MAY AMEND THIS POLICY OR MAKE EXCEPTIONS AS NECESSARY.