




Average Income Minimum Set-Aside

September 2024

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Contact Information



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Announcements

Schedule:

- The training will run from 9:00 am until approximately 12:00 pm
- We will take a break mid-morning to shift from the webinar to the open forum
- Staff will be present to answer any questions

Housekeeping:

- Certificates will not be emailed but you will receive an email confirming your attendance, usually within 24-hours in an email from the GoTo Platform, please check your “junk” folders as we cannot reissue these emails
 - If you did not use your emailed link for the training from your registration you will not receive a follow-up email or show as having attended the webinar
- We suggest you silence your phones and put an “out of office” email response to help avoid distractions during the training
- Please pose questions and comments to the “Questions Box”



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Department Resources

- **Compliance Forms**
 - <https://www.tdhca.texas.gov/compliance-forms>
- **Manuals and Rules**
 - <https://www.tdhca.texas.gov/compliance-manuals-and-rules>
- **Utility Allowance Information**
 - <https://www.tdhca.texas.gov/compliance-utility-allowance-information>
- **Income and Rent Limits**
 - <https://www.tdhca.texas.gov/income-and-rent-limits>
- **Compliance Presentations**
 - <https://www.tdhca.texas.gov/compliance-program-training-presentations>
- **Contact List**
 - <https://www.tdhca.texas.gov/compliance-division-staff>



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Average Income Minimum Set-Aside: Do you have it?

Do you own, operate or manage an Average Income development?

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Average Income Minimum Set-Aside

The Consolidated Appropriations Act of 2018 Act added section 42(g)(1)(C), which contains a 3rd minimum set-aside test option—**the average income test**. If a taxpayer elects to apply the average income test, a project meets the minimum requirements of the average income test if 40% or more of the residential units in the project are both rent-restricted and occupied by tenants whose income does not exceed the imputed income limitation designated by the taxpayer with respect to the specific unit.

Section 42(g)(1)(C)(ii)(I)-(III) provides special rules relating to the income limitation for the average income test. Specifically, unlike the 20-50 and 40-60 tests, section 42(g)(1)(C)(ii)(I) requires the taxpayer to designate each unit's imputed income limitation that is taken into account for purposes of the average income test. Section 42(g)(1)(C)(ii)(II) requires the average of the imputed income limitations designated under section 42(g)(1)(C)(ii)(I) not to exceed 60% of AMI.

Finally, section 42(g)(1)(C)(ii)(III) requires the imputed income limitation designated for any unit to be 20, 30, 40, 50, 60, 70, or 80% of AMI.

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<https://www.federalregister.gov/documents/2022/10/12/2022-22070/section-42-low-income-housing-credit-average-income-test-regulations>

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Minimum Set-Aside: Three Options

20/50
20% of the units in Project must be occupied by households with an income AND rent at, or below, 50% AMI

40/60
40% of the units in the Project must be occupied by households with an income AND rent at, or below, 60% AMI

Average Income
40% of the units within the Project are both income and rent restricted and average at, or below, 60% AMI

The minimum set-aside is calculated based on the number of units, regardless of unit size, and is tested on the last day of each tax year.

The Project is defined on line 8b of Form 8609. Each BIN is issued an 8609 and the Owner is responsible for completing Part II; which includes this election. If the Project contains multiple buildings the Owner is responsible for the attachment to Form 8609 that defines the Project.

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Average Income Minimum Set-Aside: Designations

80% 70% 60% 50% 40% 30% 20%

The designations should be dispersed across all unit types and throughout the property.

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Average Income Minimum Set-Aside: LURA Example; 100% HTC

SECTION 4 – INCOME RESTRICTIONS/RENTAL RESTRICTIONS

The Development Owner represents, warrants, and covenants throughout the Term of this Declaration and in order to satisfy the requirements of Section 42 of the Code that at least 40% or more of the Units in the Development are both Rent-Restricted and occupied by individuals whose income does not exceed the imputed income limitation designated by the taxpayer with respect to the respective Unit.

(a) The determination of whether a Tenant is a Low-Income Tenant shall be made by the Development Owner according to Department Rules and Section 42 of the Code and guidance of the Service on the basis of the current income of such Low-Income Tenant. The Development Owner shall utilize forms as permitted from time to time by the Department for providing this certification. If, upon any such certification, the Tenant of a Low-Income Unit who was, at the last income certification, a Low-Income Tenant, is found no longer to be a Low-Income Tenant, such Unit will continue to be treated as a Low-Income Unit until the next available Unit of comparable or smaller size in the building in which such Unit is located is rented to a person who is a Low-Income Tenant. A Low-Income Unit that has been vacated will continue to be treated as a Low-Income Unit, provided that (i) reasonable attempts are made to rent the Unit and (ii) no other Units of comparable or smaller size in the Development are rented to persons who are not Low-Income Tenants.

(b) During the Compliance Period, in no case will a Unit be treated as a Low-Income Unit if all the Tenants of the Unit are students (as determined under Section 152(f)(2) of the Code); provided, however, that such rule shall not apply to the types of students identified at Section 42(i)(3)(C) of the Code. After the Compliance Period, student status will be monitored in accordance with Department Rules.

(c) The Development will contain a total of 170 UNITS (including Units occupied by a resident manager or other employee, such that they are not treated as "residential rental units" for purposes of Section 42 of the Code), of which 170 UNITS treated as residential rental Units will be Low-Income Units. The amount of Tax Credits allocated to the Development is based on the requirement that the Minimum Applicable Fraction for each building in the Development will be as specified, building-by-building, in "Minimum Applicable Fraction by Building" attached hereto as Appendix E. During the Term of this Declaration, Units at the Development shall be leased and rented or made available to members of the general public who qualify as Low-Income Tenants, such that each building in the Development shall at all times satisfy the Minimum Applicable Fraction for such building. The Development Owner's failure to ensure that each building in the Development complies with such requirement will cause the Department to report such fact to the Service and may result in the reduction or recapture by the Service of Tax Credits, as well as other enforcement action by the Service and/or the Department. After the Compliance Period, the Minimum Applicable Fraction will be monitored in accordance with Department Rules.



Average Income Minimum Set-Aside: LURA Example; 100% HTC



AVERAGE INCOME RESTRICTION

The Development Owner has represented to the Department in the Development Owner's Application, authorized by the Department Rules, that among other things, the Development Owner shall lease 100% of the Units in the Development to individuals or families whose imputed incomes do not exceed an average of 60% of the area median gross income (including adjustments for family size), as more specifically provided herein, such Application, and the representations and undertakings set forth therein, being incorporated herein by reference for all purposes.

WHEREAS, the Development Owner has represented to the Department in the Development Owner's Low-Income Housing Tax Credit Application (the "Application"), authorized by the Department's Low-Income Rental Housing Tax Credit Rules, also known as the Department's "Qualified Allocation Plan" (Title 10, Part 1, Chapter 11 of the Texas Administrative Code), the Department's Uniform Multifamily Rules (Title 10, Part 1, Chapter 10 of the Texas Administrative Code), the Department's Enforcement Rules (Title 10, Part 1, Chapter 2 of the Texas Administrative Code), and the Department's Administration Rules (Title 10, Part 1, Chapter 1 of the Texas Administrative Code) (collectively, the "Department Rules"), that, among other things, the Development Owner shall lease 100% of the Units in the Development to individuals or families whose imputed incomes do not exceed an average of 60% of the area median gross income (including adjustments for family size), as more specifically provided herein, such Application, and the representations and undertakings set forth therein, being incorporated herein by reference for all purposes,

Average Income: LURA Example; 100% HTC, Additional Requirements

SECTION 4 – INCOME RESTRICTIONS/RENTAL RESTRICTIONS

The Development Owner represents, warrants, and covenants throughout the Term of this Declaration and in order to satisfy the requirements of Section 42 of the Code that at least 40% or more of the Units in the Development are both Rent-Restricted and occupied by individuals whose income does not exceed the imputed income limitation designated by the taxpayer with respect to the respective Unit.

(a) The determination of whether a Tenant is a Low-Income Tenant shall be made by the Development Owner according to Department Rules and Section 42 of the Code and guidance of the Service on the basis of the current income of such Low-Income Tenant. The Development Owner shall utilize forms as permitted from time to time by the Department for providing this certification. If, upon any such certification, the Tenant of a Low-Income Unit who was, at the last income certification, a Low-Income Tenant, is found no longer to be a Low-Income Tenant, such Unit will continue to be treated as a Low-Income Unit until the next available Unit of comparable or smaller size in the building in which such Unit is located is rented to a person who is a Low-Income Tenant. A Low-Income Unit that has been vacated will continue to be treated as a Low-Income Unit, provided that (i) reasonable attempts are made to rent the Unit and (ii) no other Units of comparable or smaller size in the Development are rented to persons who are not Low-Income Tenants.

(b) During the Compliance Period, in no case will a Unit be treated as a Low-Income Unit if all the Tenants of the Unit are students (as determined under Section 152(f)(2) of the Code); provided, however, that such rule shall not apply to the types of students identified at Section 42(i)(3)(D) of the Code. After the Compliance Period, student status will be monitored in accordance with Department Rules.

(c) The Development will contain a total of **64 UNITS** (including Units occupied by a resident manager or other employee, such that they are not treated as "residential rental units" for purposes of Section 42 of the Code), of which **64 UNITS** treated as residential rental Units will be Low-Income Units. The amount of Tax Credits allocated to the Development is based on the requirement that the Minimum Applicable Fraction for each building in the Development will be as specified, building-by-building, in "Minimum Applicable Fraction by Building" attached hereto as Addendum E. During the Term of this Declaration, Units at the Development shall be leased and rented or made available to members of the general public who qualify as Low-Income Tenants; such that each building in the Development shall at all times satisfy the Minimum Applicable Fraction for such building. The Development Owner's failure to ensure that each building in the Development complies with such requirement will cause the Department to report such fact to the Service and may result in the reduction or recapture by the Service of Tax Credits, as well as other enforcement action by the Service and/or the Department. After the Compliance Period, the Minimum Applicable Fraction will be monitored in accordance with Department Rules.



Average Income: LURA Example; 100% HTC, Additional Requirements

ADDENDUM B TO DECLARATION – ADDITIONAL USE RESTRICTIONS

MARKETING (10 TAC §11.204(1)(G) OF THE 2020 QAP)

The affirmative marketing plans must provide affirmative marketing to persons with disabilities. The Development Owner shall specifically market to veterans through direct marketing or contracts with veteran's organizations. The Development Owner shall identify how they will specifically market to veterans and report to the Department in the annual housing report on the affirmative marketing efforts to veterans. Exceptions to this requirement must be approved in writing by the Department.

AVERAGE INCOME RESTRICTION

The Development Owner has represented to the Department in the Development Owner's Application, authorized by the Department Rules, that among other things, the Development Owner shall lease **100%** of the Units in the Development to individuals or families whose imputed incomes do not exceed an average **54%** of the area median gross income (including adjustments for family size), as more specifically provided herein, such Application, and the representations and undertakings set forth therein, being incorporated herein by reference for all purposes.

LONGER EXTENDED USE PERIOD (10 TAC §11.9(E)(5) OF THE 2020 QAP)

In accordance with the Code, each Development is required to maintain its affordability for a 15-year Compliance Period and, subject to certain exceptions, an additional 15-year period. Development Owner indicates below that the Development will extend the affordability period beyond the 30 years required in the Code as follows:

The Development will extend its affordability for 15 years, resulting in an Extended Use Period of **45** years.

WHEREAS, the Development Owner has represented in the Development Owner's Tax Credit Application (the "Application"), authorized by the Department's "Qualified Allocation Plan" (Title 10, Part 1, Chapter 10 of the Texas Administrative Code), the Department's Enforcement Rules (Title 10, Part 1, Chapter 2 of the Texas Administrative Code), and the Department's Administration Rules (Title 10, Part 1, Chapter 1 of the Texas Administrative Code) (collectively, the "Department Rules"), that, among other things, the Development Owner shall lease **100% of the Units in the Development to individuals or families whose imputed incomes do not exceed an average of 54% of the area median gross income (including adjustments for family size), as more specifically provided herein, such Application, and the representations and undertakings set forth therein, being incorporated herein by reference for all purposes;**

Average Income Minimum Set-Aside: LURA Example; Mixed Income

SECTION 4 – INCOME RESTRICTIONS/RENTAL RESTRICTIONS

The Development Owner represents, warrants, and covenants throughout the Term of this Declaration and in order to satisfy the requirements of Section 42 of the Code that at least 40% or more of the Units in the Development are both Rent-Restricted and occupied by individuals whose income does not exceed the imputed income limitation designated by the taxpayer with respect to the respective Unit.

(a) The determination of whether a Tenant is a Low-Income Tenant shall be made by the Development Owner according to Department Rules and Section 42 of the Code and guidance of the Service on the basis of the current income of such Low-Income Tenant. The Development Owner shall utilize forms as permitted from time to time by the Department for providing this certification. If, upon any such certification, the Tenant of a Low-income Unit who was, at the last income certification, a Low-Income Tenant, is found no longer to be a Low-Income Tenant, such Unit will continue to be treated as a Low-Income Unit until the next available Unit of comparable or smaller size in the building in which such Unit is located is rented to a person who is a Low-Income Tenant. A Low-Income Unit that has been vacated will continue to be treated as a Low-Income Unit, provided that (i) reasonable attempts are made to rent the Unit and (ii) no other Units of comparable or smaller size in the Development are rented to persons who are not Low-Income Tenants.

(b) During the Compliance Period, in no case will a Unit be treated as a Low-Income Unit if all the Tenants of the Unit are students (as determined under Section 152(f)(2) of the Code); provided, however, that such rule shall not apply to the types of students identified at Section 42(i)(3)(D) of the Code. After the Compliance Period, student status will be monitored in accordance with Department Rules.

(c) The Development will contain a total of **135 UNITS** (including Units occupied by a resident manager or other employee, such that they are not treated as "residential rental units" for purposes of Section 42 of the Code), of which **94 UNITS** treated as residential rental Units will be Low-Income Units. The amount of Tax Credits allocated to the Development is based on the requirement that the Minimum Applicable Fraction for each building in the Development will be as specified, building-by-building, in "Minimum Applicable Fraction by Building" attached hereto as Addendum F. During the Term of this Declaration, Units at the Development shall be leased and rented or made available to members of the general public who qualify as Low-Income Tenants; such that each building in the Development shall at all times satisfy the Minimum Applicable Fraction for such building. The Development Owner's failure to ensure

Average Income Minimum Set-Aside: LURA Example; Mixed Income

ADDENDUM B TO DECLARATION – ADDITIONAL USE RESTRICTIONS

MARKETING (10 TAC §11.204(1)(G) OF THE 2020 QAP)

The affirmative marketing plans must provide affirmative marketing to persons with disabilities. The Development Owner will specifically market to veterans through direct marketing or contracts with veterans service organizations. The Development Owner will be required to identify how they will specifically market to veterans and report to the Department on the results of the marketing efforts to veterans. Exceptions to this requirement must be approved in writing by the Department.

AVERAGE INCOME RESTRICTION

The Development Owner has represented to the Department in the Development Owner's Application, authorized by the Department Rules, that among other things, the Development Owner shall lease **69.62%** of the Units in the Development to individuals or families whose imputed incomes do not exceed an average **54%** of the area median gross income (including adjustments for family size), as more specifically provided herein, such Application, and the representations and undertakings set forth therein, being incorporated herein by reference for all purposes.

WHEREAS, the Development Owner has represented to the Department in the Development Owner's Low-Income Housing Tax Credit Application (the "Application"), authorized by the Department's Low-Income Rental Housing Tax Credit Rules, also known as the Department's "Qualified Allocation Plan" (Title 10, Part 1, Chapter 11 of the Texas Administrative Code), the Department's Uniform Multifamily Rules (Title 10, Part 1, Chapter 10 of the Texas Administrative Code), the Department's Enforcement Rules (Title 10, Part 1, Chapter 2 of the Texas Administrative Code), and the Department's Administration Rules (Title 10, Part 1, Chapter 1 of the Texas Administrative Code) (collectively, the "Department Rules"), that, among other things, the Development Owner shall lease **69.62% of the Units in the Development to individuals or families whose imputed incomes do not exceed an average of 54% of the area median gross income (including adjustments for family size), as more specifically provided herein, such Application, and the representations and undertakings set forth therein, being incorporated herein by reference for all purposes;**

Average Income Minimum Set-Aside: Applicable Fraction

ADDENDUM F TO DECLARATION – MINIMUM APPLICABLE FRACTION BY BUILDING

BUILDING NUMBER	BUILDING IDENTIFICATION NUMBER (BIN)	MINIMUM APPLICABLE FRACTION
1.	TX-20 [REDACTED]	100%
2.	TX-20 [REDACTED]	100%
3.	TX-20 [REDACTED]	100%
4.	TX-20 [REDACTED]	100%

ADDENDUM F TO DECLARATION – MINIMUM APPLICABLE FRACTION BY BUILDING

BUILDING NUMBER	BUILDING IDENTIFICATION NUMBER (BIN)	MINIMUM APPLICABLE FRACTION
1.	TX-20 [REDACTED]	69.63%

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Minimum Set-Aside versus Applicable Fraction

Minimum Set-Aside

Project Rule

Applicable Fraction

Building Rule



The Development average outlined in the Land Use Restriction Agreement (LURA) is in addition to the two things on this slide. The minimum set-aside is a project test; the applicable fraction is a building test; the additional state rent and occupancy requirements are a development test.

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Average Income Minimum Set-Aside: Forms 8609

Form 8609 Low-income Housing Credit Allocation and Certification

Department of Housing and Community Affairs

Part I Allocation of Credit

1. Allocation to Qualified Basis Allocated From

A. Address of building (do not use P.O. box) (see instructions)

B. Name and address of housing credit agency

C. Name, address, and TIN of building owner receiving allocation

D. Employer identification number of agency

E. Building identification number (BIN)

F. Date of allocation

G. Maximum housing credit dollar amount allowable

Part II First-Year Certification—Completed by Building Owners with respect to the First Year of the Credit Period

7 Eligible basis of building (see instructions) **7** 500,000

8a Original qualified basis of the building at close of first year of credit period **8a** 500,000

b Are you treating this building as part of a multiple building project for purposes of section 42(i)(2)(B)? Yes No

9a If box 6a or box 6d is checked, do you elect to reduce eligible basis under section 42(j)(2)(B)? Yes No

b For market-rate units above the average quality standards of low-income units in the building, do you elect to reduce eligible basis by disproportionate costs of non-low-income units under section 42(d)(3)(B)? Yes No

10 Check the appropriate box for each election.

Caution: Once made, the following elections are irrevocable.

a Elect to begin credit period the first year after the building is placed in service (section 42(f)(1)) Yes No

b Elect **not** to treat large partnership as taxpayer (section 42(j)(5)) Yes No

c Elect minimum set-aside requirement (section 42(g)) (see instructions):

20-50 40-60 Average income 25-60 (N.Y.C. only)

d Elect deep rent skewed project (section 142(d)(4)(B)) (see instructions) 15-40

If you do not have 8609s, we will treat all buildings as individual building projects and must meet all requirements as such.

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Average Income Minimum Set-Aside: Average Income Qualified Group

The Owner will be responsible for reporting the Average Income Qualified Group on the Annual Owner's Compliance Report.



19. Does the property use an Average Income minimum set aside?
Answer: **Y**

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Average Income Minimum Set-Aside: Example 1

60% + 40% + 60% + 30% + 50% = 240 ÷ 5 = 48% average AMI

60%	50%	30%	80%
40%	70%	80%	50%
40%	60%	70%	80%

Form 8609 Elections:
Average Income Set-Aside
Individual Building Project

40% of All Units must be both rent and income restricted = 5 units (4.8 rounded up to nearest unit)

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Average Income Minimum Set-Aside: Example 2

53.33% Average 50% Average

60%	50%	30%	60%
40%	70%	70%	50%
40%	60%	70%	80%

Form 8609 Elections:
Average Income Set-Aside
Individual Building Project

40% of each building's Units must be both rent and income restricted = 3 units (2.4 rounded up to nearest unit)

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Average Income Minimum Set-Aside: Example 2 with a BUT

$60\% + 40\% + 40\% + 50\% + 70\% + 60\% + 30\% + 70\% + 70\% + 60\% + 50\% + 80\% = 680$
 $680 \div 12 = 56.67\%$ average AMI

60%	50%	30%	60%
40%	70%	70%	50%
40%	60%	70%	80%

**Form 8609 Elections:
Average Income Set-Aside
Individual Building Project**

The Development's LURA requires that the property as a whole maintain an average of 60%

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Average Income Minimum Set-Aside: Example 3

$60\% + 40\% + 60\% + 30\% + 70\% = 260 \div 5 = 52\%$ average AMI

60%	50%	30%	80%
40%	70%	80%	50%
40%	60%	70%	80%

**Form 8609 Elections:
Average Income Set-Aside
Multiple Building Project**

40% of each building's Units must be both rent and income restricted = 5 units (4.8 rounded up to nearest unit)

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Average Income Minimum Set-Aside: Example 4

60%	Market	30%	80%
40%	70%	80%	50%
40%	60%	70%	Market

Applicable Fraction: 83.33%
 Average Income Set-Aside
 LURA requires 54% Average

40% of All Low-Income
 Units must be both rent
 and income restricted = 4
 units

Applicable Fraction
 Minimum Set-Aside
 LURA Required
 Average

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Average Income Testing Tool

We have a testing tool that will be available with this training and in the "Compliance Forms for Multifamily Properties" section of the Compliance Forms website, <https://www.tdca.texas.gov/compliance-forms>.

Building BIN	Building #	UNIT #	MOVE IN DATE	MOVE OUT DATE	LAST NAME	ANNUAL INCOME	TENANT PAID RENT	UTIL Y ALLOW	HOUSING ASSIST. PAYMENT	# BRs	TIC DATE	RE	HH CERT	UNIT QUALIFICATIONS	Special Needs	HTC/TCAP/HTC Income Restriction %	HTC/TCAP/HTC Rent Restriction %
TXBIN01	1	101	03/29/2022		Castillo	39895	1452	114	0	2	03/29/2024	Y		1 Income HTC: 60 Rent HTC: 60	No	60	60
TXBIN01	1	102	06/29/2024		Cummings	39481	1303	114	0	2	06/29/2024	N		2 Income HTC: 50 Rent HTC: 50	No	50	50
TXBIN01	1	103	03/29/2022		Sosa	37617	1204	114	0	2	03/29/2024	Y		3 Income HTC: 50 Rent HTC: 50	No	50	50
TXBIN01	1	104	04/21/2022		Martinez	10092	98	114	1390	2	04/21/2024	Y		1 Income HTC: 50 Rent HTC: 50	No	50	50
TXBIN01	1	105	03/24/2023		Grey	34584	1031	77	0	1	03/24/2024	Y		1 Income HTC: 50 Rent HTC: 50	No	50	50
TXBIN01	1	106	04/30/2022		Downing	36290	133	77	980	1	04/30/2024	Y		1 Income HTC: 60 Rent HTC: 60	Yes	60	60
TXBIN01	1	107	03/30/2022	06/17/2024	Garza	24658	1031	77	0	1	03/30/2024	Y		1 Income HTC: 50 Rent HTC: 50	No	50	50
TXBIN01	1	108	07/13/2023		Torres	35935	1219	114	0	2	07/13/2023	N		4 Income HTC: 60 Rent HTC: 60	No	60	60

Pandora Springs Apartments
Occupancy Restriction Summary

HTC

Required%	Actual Project Average	Requirement Met?
Average Income: 60	59.16666667	Yes

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Average Income Testing Tool

We have a testing tool that will be available with this training and in the "Compliance Forms for Multifamily Properties" section of the Compliance Forms website, <https://www.tdhca.texas.gov/compliance-forms>.

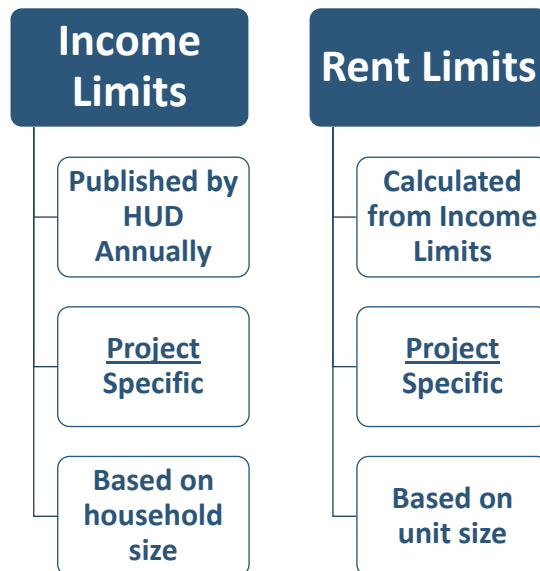
Pandora Springs Apartments			
Occupancy Restriction Summary			
HTC			
	Required%	Actual Project Average	Requirement Met?
Average Income:	60	59.16666667	Yes

This example represents a multiple building project.

If each building is an individual project, the test must be performed on each project.

Additional State Requirements in the LURA can be tested in this tool, also.

Income and Rent Limits



Income and Rent Limit Tool: Where is it?

Income and Rent Limits

If you or someone you know is in need of assistance, please visit our Help for Texans Page.

Help for Texans

Helpful Tools

- Reasonable Accommodation and Reasonable Modification Info
- Tenant Handout: Income and Rent Limits [English \(PDF\)](#) [Spanish \(PDF\)](#)
- Income and Rent Limits in TDHCA-Supported Properties
- Archived Income and Rent Limits

Housing Tax Credit, Tax Exempt Bond, HOME, Neighborhood Stabilization and Housing Trust Fund rental development programs

[Income and Rent Tool](#)

<https://www.tdhca.texas.gov/income-and-rent-limits>

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Income and Rent Limit Tool: Where is it?

Income and Rent Tool

The 2023 Housing Tax Credit limits are effective 5/15/2023. The NSP income limits are effective 6/15/2023. The Community Planning Division (CPD) of HUD released the 2023 HOME Program income limits effective 6/15/2023 and rent limits that are effective for all new leases and lease renewals after 6/15/2023. The National Housing Trust Fund income and rent limits are effective 6/15/2023.

County:	TRAVIS
Financing:	9% Housing Credits
Place:	Austin
Project PIS Date:	04/01/2021-05/16/2021
Carryover/Determination Notice/Subaward Agreement date:	05/17/2018-04/23/2019
For Home and NSP Only:	On or Before 06/14/2023
<input type="button" value="Submit"/>	

<https://www.tdhca.texas.gov/income-and-rent-limits>

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Income and Rent Limit Tool: Where is it?

County: TRAVIS
 Financing: 9% Housing Credits
 Place: Austin
 Project PIS Date: 04/01/2021-05/16/2021
 Carryover/Determination Notice/Subaward Agreement date: 05/17/2018-04/23/2019
 For Home and NSP Only: On or Before 08/14/2023

Submit Bookmark

MTSP Median Income : 122300

Income Limits

Income	1	2	3	4	5	6	7	8
20	16360	18700	21040	23360	25240	27100	28980	30840
30	24540	28050	31560	35040	37860	40650	43470	46260
40	32720	37400	42080	46720	50480	54200	57960	61680
50	40900	46750	52600	58400	63100	67750	72450	77100
60	49080	56100	63120	70080	75720	81300	86940	92520
70	57260	65450	73640	81760	88340	94850	101430	107940
80	65440	74800	84160	93440	100960	108400	115920	123360

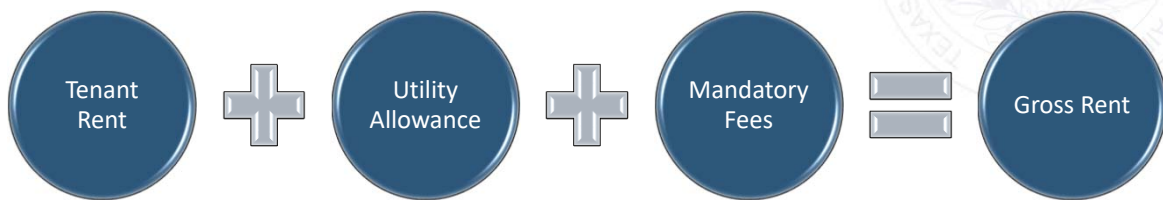
Rent Limits

Rent	0	1	2	3	4	5
20	409	438	526	607	677	747
30	613	657	789	911	1016	1121
40	818	876	1052	1215	1355	1495
50	1022	1095	1315	1518	1693	1869
60	1227	1314	1578	1822	2032	2243
70	1431	1533	1841	2126	2371	2617
80	1636	1753	2104	2430	2710	2991

[\[print to pdf\]](#)

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Gross Rent Calculation



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Average Income Minimum Set-Aside: Gross Rent Example 1

UNIT #	MOVE IN DATE	MOVE OUT DATE	LAST NAME	ANNUAL INCOME	TENANT PAID RENT	UTILITY ALLOW.	HOUSING ASSIST. PAYMENT	# BR S	TIC DATE	RE CERT	HH SIZE	UNIT QUALIFICATIONS	MEETS SPECIAL NEEDS REQ.
2101	02/26/2024		Brown	50650	1219	114		2	02/26/2024	N	4	Income Rent HTC: 50 HTC: 50	No
2103	03/24/2023		Morris	18675	555	77		1	03/24/2024	Y	1	Income Rent HTC: 30 HTC: 30	No
2105	02/26/2024		Cardenas	24082	693	114		2	02/26/2024	N	2	Income Rent HTC: 30 HTC: 30	Yes
2107	09/13/2023		Villarreal	43346	1391	147		3	09/13/2023	N	3	Income Rent HTC: 50 HTC: 50	No
2201	02/25/2022		Robertson	46414	1392	114		2	02/25/2024	Y	2	Income Rent HTC: 80 HTC: 80	Yes

Rent Limits						
Rent	0	1	2	3	4	5
20	441	472	567	655	731	806
30	661	708	850	982	1096	1210
40	882	945	1134	1310	1462	1613
50	1102	1181	1417	1638	1827	2016
60	1323	1417	1701	1965	2193	2420
70	1543	1653	1984	2293	2558	2823
80	1764	1890	2268	2621	2924	3227

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Average Income Minimum Set-Aside: Gross Rent Example 2

UNIT #	MOVE IN DATE	MOVE OUT DATE	LAST NAME	ANNUAL INCOME	TENANT PAID RENT	UTILITY ALLOW.	HOUSING ASSIST. PAYMENT	# BR S	TIC DATE	RE CERT	HH SIZE	UNIT QUALIFICATIONS	MEETS SPECIAL NEEDS REQ.
2101	02/26/2024		Brown	50650	1219	114		2	02/26/2024	N	4	Income Rent HTC: 60 HTC: 60	No
2103	03/24/2023		Morris	18675	555	77		1	03/24/2024	Y	1	Income Rent HTC: 50 HTC: 50	No
2105	02/26/2024		Cardenas	24082	693	114		2	02/26/2024	N	2	Income Rent HTC: 30 HTC: 30	Yes
2107	09/13/2023		Villarreal	43346	1391	147		3	09/13/2023	N	3	Income Rent HTC: 80 HTC: 80	No
2201	02/25/2022		Robertson	46414	1392	114		2	02/25/2024	Y	2	Income Rent HTC: 80 HTC: 80	Yes

Project Average = 60%

Rent Limits						
Rent	0	1	2	3	4	5
20	441	472	567	655	731	806
30	661	708	850	982	1096	1210
40	882	945	1134	1310	1462	1613
50	1102	1181	1417	1638	1827	2016
60	1323	1417	1701	1965	2193	2420
70	1543	1653	1984	2293	2558	2823
80	1764	1890	2268	2621	2924	3227

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Gross Rent: Examples; How to Correct

In accordance with 10 TAC §10.622(a):

- If it is determined that an HTC Development, during the Compliance Period, collected rent in excess of the rent limit established by the minimum set-aside, the Owner must correct the violation by **reducing** the rent charged.
- The Department will report the violation as corrected on **January 1st** of the year following the violation.
- The refunding of overcharged rent does not avoid the disallowance of the credit by the IRS.
- Since Average Income encompasses all designations federally all rent overages are treated as reportable issues of noncompliance when the project average is over 60%.

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Average Income: Additional Rent & Occupancy Example

UNIT #	MOVE IN DATE	MOVE OUT DATE	LAST NAME	ANNUAL INCOME	TENANT PAID RENT	UTILITY ALLOW.	HOUSING ASSIST. PAYMENT	# BR S	TIC DATE	RE CERT	HH SIZE	UNIT QUALIFICATIONS		MEETS SPECIAL NEEDS REQ.
2101	02/26/2024		Brown	50650	1219	114		2	02/26/2024	N	4	Income Rent	HTC: 50	No
2103	03/24/2023		Morris	18675	555	77		1	03/24/2024	Y	1	Income Rent	HTC: 30	No
2105	02/26/2024		Cardenas	24082	693	114		2	02/26/2024	N	2	Income Rent	HTC: 30	Yes
2107	09/13/2023		Villarreal	43346	1391	147		3	09/13/2023	N	3	Income Rent	HTC: 50	No
2201	02/25/2022		Robertson	46414	1392	114		2	02/25/2024	Y	2	Income Rent	HTC: 80	Yes

Project Average = 48%

Rent Limits						
Rent	0	1	2	3	4	5
20	441	472	567	655	731	806
30	661	708	850	982	1096	1210
40	882	945	1134	1310	1462	1613
50	1102	1181	1417	1638	1827	2016
60	1323	1417	1701	1965	2193	2420
70	1543	1653	1984	2293	2558	2823
80	1764	1890	2268	2621	2924	3227

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Additional Rent and Occupancy: Examples; How to Correct

In accordance with 10 TAC §10.622(b):

- **Refund** or **credit**, the excess amount collected to the affected household.
 - Calculate the amount of rent overage paid by the household,
 - Reduce the household's rent and refund/credit the excess amount collected,
 - Update the lease contract and notify the household in writing of the rent reduction, and
 - Submit evidence of the rent overage calculation, a copy of the cancelled check or evidence of the account credit, the updated lease contract and rent ledger to evidence the reduced rent has been implemented.
 - The noncompliance will be considered corrected on the date which the overcharged rent was refunded/credited to the resident and the date that the rent plus the utility allowance is equal to or less than the applicable limit.

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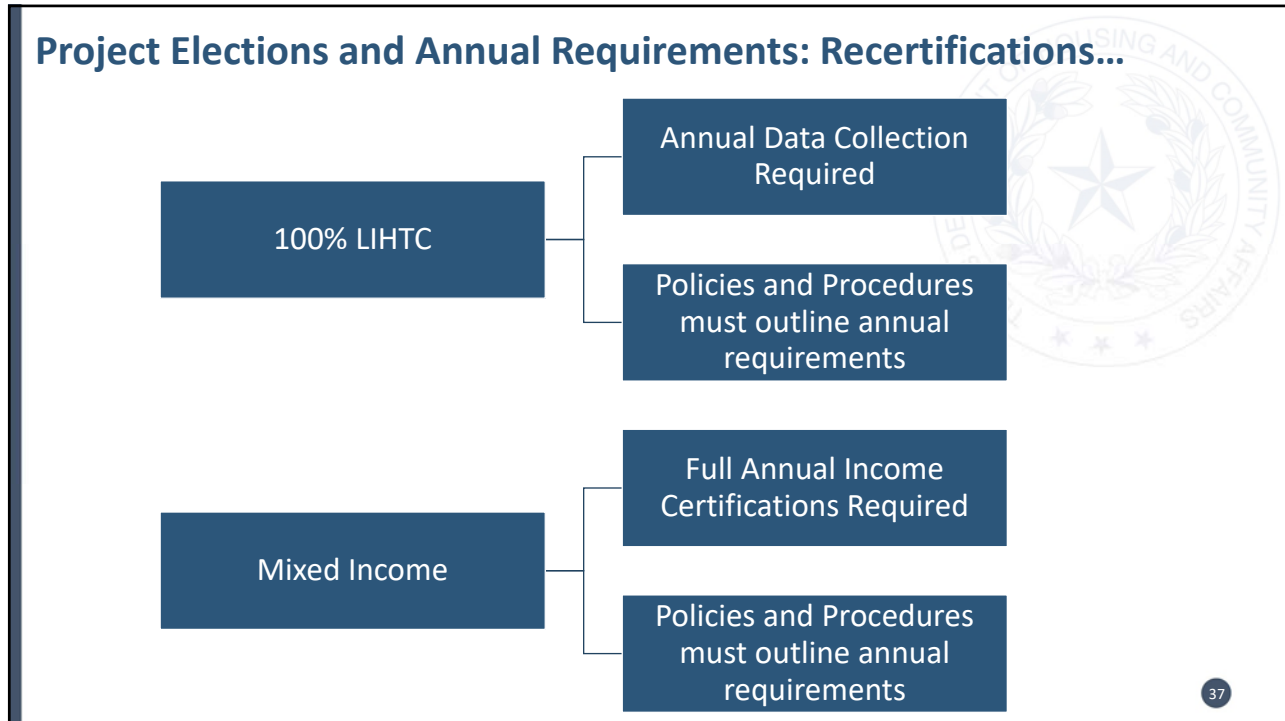
Additional Rent and Occupancy: Examples; How to Correct



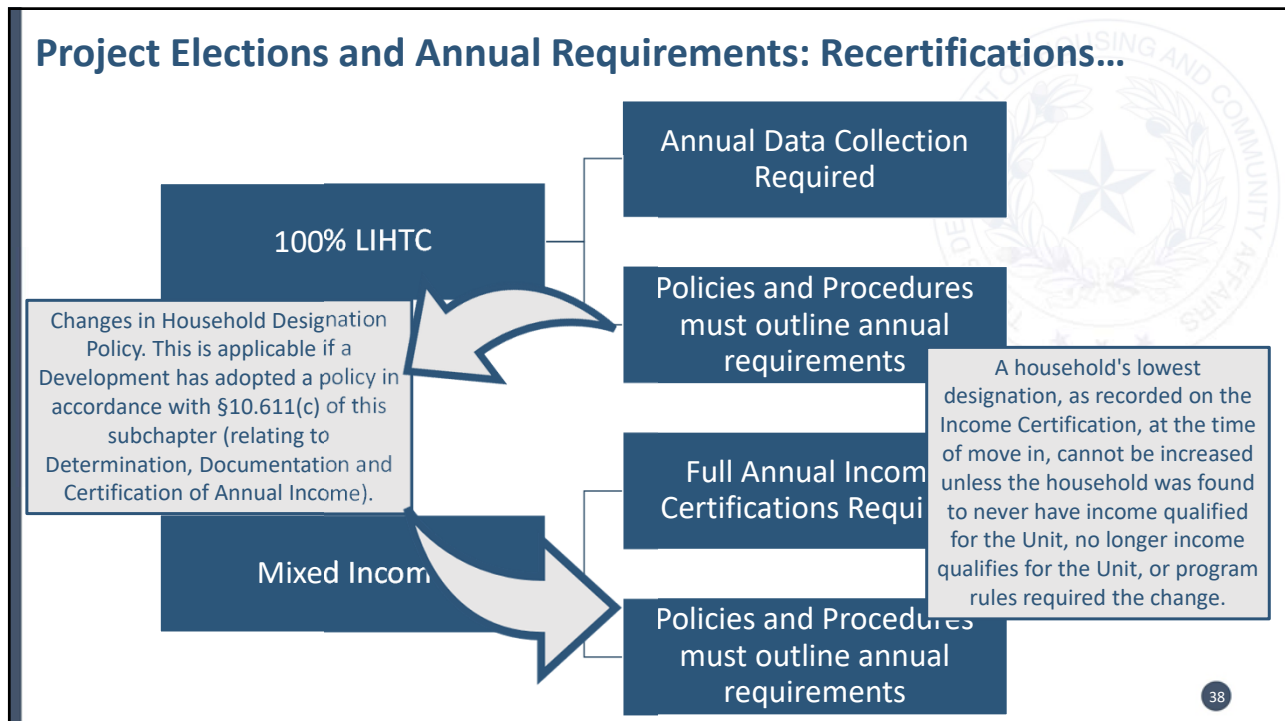
The Owner must obtain in writing, from the household, the election to receive a full refund check or to have the entire overpaid amount credited to their household account. In the absence of a tenant election, a full refund check must be presented to the household within thirty days.

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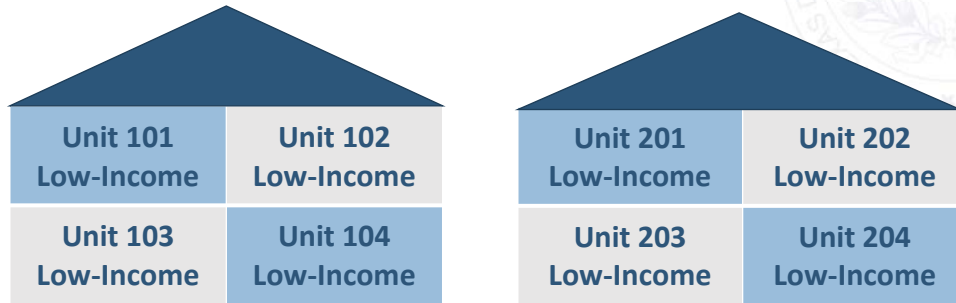


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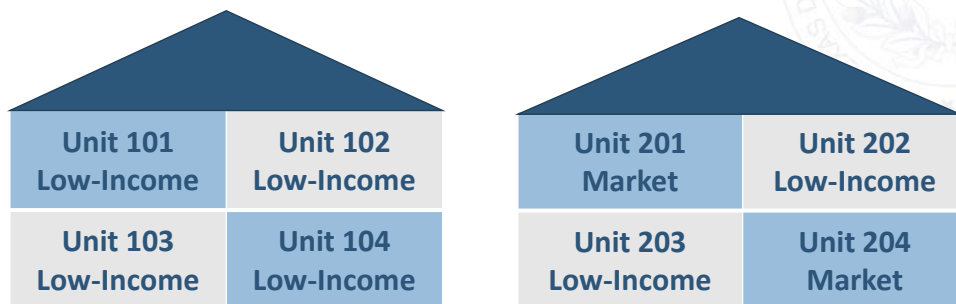
Project Elections and Annual Requirements: 100% Low-Income



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Project Elections and Annual Requirements: Mixed Income Project



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Project Elections and Annual Requirements: Multiple Projects

Unit 101 Low-Income	Unit 102 Low-Income	Unit 201 Market	Unit 202 Low-Income
Unit 103 Low-Income	Unit 104 Low-Income	Unit 203 Low-Income	Unit 204 Market

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Average Income Minimum Set-Aside: 140% Threshold (Over-Income)

20%, 30%, 40%, 50% and 60% are OI at 140% of 60% AMI.

140% Threshold

60% AMI 70% AMI 80% AMI

140% of 60% AMI 140% of 70% AMI 140% of 80% AMI

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Average Income Minimum Set-Aside: 10 TAC §10.615

- The Department will examine the actual gross rent (tenant portion of rent plus utility allowance plus any mandatory fees) and income levels of all households to determine if the additional income and rent requirements of the LURA are met.
- The Department will examine the actual gross rent and income of all households to determine if developments that elected the average income minimum set-aside have met the federal requirements and any lower additional occupancy restriction reflected in the Development's LURA.
- The Department will monitor the Available Unit Rule in the following manner for Developments that elected the average income minimum set aside:
 - Owners are not required to terminate the tenancy of over income households. When the Unit occupied by an over-income household is vacated, it must be reoccupied by a household with an income and rent level equal to or less than the rent level of the household that went over-income. In addition, the Unit must be reoccupied by a household that restores the low income average of the project to 60% or less.

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Available Unit Rule (AUR)

When a household goes Over-Income (OI)

- Keep Rent Restricted
- Lease the next unit of smaller/comparable size to low-income household
- **The above items must continue until the Applicable Fraction is restored in the building**

The Available Unit Rule (AUR) is a building rule.

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Average Income Minimum Set-Aside: AUR Example 1

56% Average		58% Average	
60%	50%	30%	Market Vacant
40%	70%	80% OI on 9/1	50%
Market	60%	70%	60%

Form 8609 Elections:
Average Income Set-Aside Individual Building Project

Building 2 certified an 80% household and determined that the household was over-income. The one market unit is vacant, the next household moved into the market unit must be a qualified low-income unit that restores the project average and applicable fraction.

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Average Income Minimum Set-Aside: AUR Example 2

56% Average		52.5% Average	
60%	50%	30%	Market Move-in 9/6
40%	70%	Market as of 9/6	50%
Market	60%	70%	60%

Form 8609 Elections:
Average Income Set-Aside Individual Building Project

Uh oh, now we have a problem. We moved a market household into the market unit after the 80% unit went OI, now we have two market units and do not meet our applicable fraction of 83.33%...

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Average Income Minimum Set-Aside: AUR Example 3

**Form 8609 Elections:
Average Income Set-Aside
Individual Building Project**

56% Average		58% Average	
60%	50%	Market as of 9/6	Market Move-In 9/6
40%	70%	80%	50%
Market	60%	70%	60%

Oops, our 30% household got a BIG promotion and now the household is over-income. We also moved a market household into the vacant market unit.

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Average Income Minimum Set-Aside: Full-Time Student Example 1

**Average Income Set-Aside
Applicable Fraction 83.33%**

57% Average			
60%	50%	30%	Market
40%	70%	80% FT Student HH on 9/1	50%
Market	60%	70%	60%

The 80% Household recertified and is now a Full-Time Student Household. This is an issue of noncompliance and the unit is removed from the project average.

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Average Income Minimum Set-Aside: Full-Time Student Example 2

58% Average			
60%	50%	30% FT Student HH on 9/1	Market
50%	70%	80%	50%
Market	60%	70%	60%

**Average Income Set-Aside
Applicable Fraction 83.33%**

The 30% Household recertified and is now a Full-Time Student Household. This is an issue of noncompliance and the unit is removed from the project average.

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Average Income Minimum Set-Aside: Layered with Other Programs

- All program requirements must be met
- The BOND Program does not recognize 70% and 80% units as low-income; therefore, for the BOND program, full Income Recertifications would be implemented
- As monitors, we will look at the Average Income HTC requirements and any other program requirements, the programs may not always overlap perfectly or neatly
- Annual Certification requirements must be met for all programs
- Programs that are layered (even when they are not Department programs) must be operated individually and concurrently.

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Average Income: LIHTC and BOND; Mixed Income

AVERAGE INCOME RESTRICTION

The Development Owner has represented to the Department in the Development Owner's Application, authorized by the Department Rules, that among other things, the Development Owner shall lease **79.83%** of the Units in the Development to individuals or families whose imputed incomes do not exceed an average of **60%** of the area median gross income (including adjustments for family size), as more specifically provided herein, such Application, and the representations and undertakings set forth therein, being incorporated herein by reference for all purposes.

119 Total Units
95 Low-Income Units

HTC Designations:

20%, 30%, 40%, 50%, 60%, 70% & 80%

BOND Designations:

48 Units at 60% AMI

71 Units are Eligible Tenants (ET)

Let's discuss and climb this mountain together!

Section 2. Tax-Exempt Status of the Governmental Lender Note. The Owner will not take any action or omit to take any action which, if taken or omitted, respectively, would adversely affect the Federal Tax Status of the Governmental Lender Note. With the intent not to limit the generality of the foregoing, the Owner covenants and agrees:

(a) That the Development will be owned, managed and operated as a "qualified residential rental project" within the meaning of Section 142(d) of the Code, on a continuous basis during the Qualified Project Period. In particular, the Owner covenants and agrees, continuously during the Qualified Project Period, as follows:

(viii) that each Restricted Unit will be rented or available for rental on a continuous basis to Eligible Tenants (subject to the limitations and exceptions contained in this Regulatory Agreement, the Tax Exemption Agreement and the Borrower Loan Agreement) at all times during the longer of (A) the term of the Governmental Lender Note or (B) the Qualified Project Period, that the Owner will not give preference in renting Units to any particular class or group of persons, other than Persons with Special Needs, Low-Income Tenants, and other Eligible Tenants as provided herein, and that at no time will any portion of the Development be exclusively reserved for use by a limited number of nonexempt persons in their trades or businesses;

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Average Income: LIHTC and BOND, 100% Low-Income

AVERAGE INCOME RESTRICTION

The Development Owner has represented to the Department in the Development Owner's Application, authorized by the Department Rules, that among other things, the Development Owner shall lease **100%** of the Units in the Development to individuals or families whose imputed incomes do not exceed an average of **60%** of the area median gross income (including adjustments for family size), as more specifically provided herein, such Application, and the representations and undertakings set forth therein, being incorporated herein by reference for all purposes.

119 Total Units
119 Low-Income Units

HTC Designations:

20%, 30%, 40%, 50%, 60%, 70% & 80%

BOND Designations:

48 Units at 60% AMI

71 Units are Eligible Tenants (ET)

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Average Income Minimum Set-Aside: Reminders

- This training was not intended as a comprehensive Tax Credit training, we did not discuss the whole operation of an affordable housing community. All requirements, federal and state, must be met in order to comply with the program.
- All low-income households must be properly certified in order to qualify for any designation (other than market) and rents must remain restricted. The Unit Status Report (USR) should reflect the correct designation as selected on the Income Certification.
- All reporting requirements must be met as outlined in 10 TAC §10.607.
- Record keeping requirements must be met as outlined in 10 TAC §10.608.
- Written Policies and Procedures & Affirmative Fair Housing Marketing Plan requirements remain in place, contact fair.housing@tdhca.texas.gov with questions.
- It is imperative that the Unit Status Report be current and correct with all set-asides, but especially with the Average Income set-aside.

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THANK YOU

September 2024 Office Hours

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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MULTIFAMILY COMPLIANCE DIVISION

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DIVISION PHONE NUMBER: (512) 305-8869




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