

Income Averaging: Transactional Economics and Insight

Dan Rosen
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Outline

1. Recent Experience
2. Positive/Negative Factors
3. Details of Recently Closed Deal
4. Other Challenges



Recent Experience With Income Averaging

Recent Experience

- Closed with Income Averaging (IA) in place
- Closed with “placeholder” for IA to be approved later
- Adopted IA post-closing
- Explored IA but declined or rejected
 - By agency
 - By investor
 - By developer



Positive/Negative Factors

Positive Factors

- 4% credits (bond-financed)
- Preservation project
- 100% affordable (LIHTC)
- Single building
- Supportive credit agency
 - <https://www.ncsha.org/resource/state-income-averaging-policies/>
- Supportive investor



Positive/Negative Factors

Less Positive Factors

- 9% credits
- New construction
- Mixed-income
- Multiple buildings
- Existing extended use agreement (“EUA”)
- Already closed



Recent Closing with IA

Haynes House - Boston, MA

- Bond-financed, 4% credits, acq/rehab
- 131 Units
 - 19 existing residents over 60% AMI
 - 7 existing residents over 80% AMI
- Not previously LIHTC
- Single Building
- Project-Based Subsidy for 33 units
(all under 30% AMI)



Partnership Agreement – Key Issues

- ❑ Representations, commitments:
 - Targeted 57% average income (EUA 59%)

% AMI Average	Units		
30%	7.5	25	0.3
60%	48	80	0.6
80%	15.2	19	0.8
	70.7	124	
57.0% AMI TOTAL			

- ❑ Conditions to capital contributions
 - “unit by unit matrix” required 8609 showing election of IA
- ❑ “Change in Law” guaranty: carveout?



EUA- Key Issues- Unit Designation

- Agency not assigning designated percentages to specific units in the EUA

Occupancy Restrictions

Grantor shall maintain a list of the Designated Percentage applicable to each Low-Income Unit. Unless otherwise approved by DHCD and by the Bond Agency, Low-Income Units shall retain the same Designated Percentage during the Low-Income Tenant Rental Period except in the circumstances described in Section 5.4 above, in which case (i) the Designated Percentage formerly applicable to the Over-Income Unit shall apply going forward to the formerly unrestricted Unit occupied by a new Low-Income Tenant, (it) the Over-Income Unit shall no longer be considered restricted hereunder, and (ii) the Grantor shall notify DHCD and the Bond Agency of the change in the Designated Percentage applicable to the affected Units.



EUA- Key Issues- Next Available Unit Rule

- ❑ Next available unit rule- filling in statutory gaps

Occupancy Restrictions

Subject to the next succeeding sentence, any Unit occupied by an individual or family who is a Low-Income Tenant at the commencement of occupancy shall continue to be treated as if occupied by a Low-Income Tenant regardless of increases to such Low-Income Tenant's income so long as such Unit continues to be rent-restricted. Notwithstanding the foregoing, if a Low-Income Tenant's income increases above 140% of the greater of (x) 60 percent of Area Median Income or (y) the Designated Percentage of Area Median Income, applicable to such Unit, such tenant shall no longer be considered a Low-Income Tenant if either **(A) the next available Unit of comparable or smaller size that was not a Low-Income Unit prior to becoming vacant is rented to a tenant whose income exceeds the Designated Percentage of Area Median Income applicable to the Unit occupied by the over-income Low-Income Tenant (the "Over-Income Unit")** or (B) the next available Unit of comparable or smaller size which was a Low-Income Unit prior to become vacant is rented to a tenants whose income exceeds the Designated Percentage of Area Median Income applicable to such vacant Unit. **If two or more Low- Income Units are Over-Income Units at the same time and a Unit of comparable or smaller size to both such Over-Income Units that was not a Low-Income Unit prior to becoming vacant becomes available, such Unit shall be rented to a Low-Income Tenant whose income does not exceeds the lower of the Designated Percentages of Area Median Income applicable to such Over-Income Unit.**



Adopting IA Post-Closing

Background

- 4% deals, not yet placed in service
(narrow window)

Permitted, but discouraged

- Investor approval (underwriting questions and unexpected equity increase)
- Agency approval: updated 42(m)

Two examples in December

- One moved forward
- One decided it was too late – time to lease-up



IA Considered and Not Used

- Agency: rejected request (e.g., 9% deal)
- Investor: too risky (especially re minimum set-aside)
- Developer: not worth it (small increase, multiple building project)



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