

Minimum Set-Asides

Form 8609 Low-Income Housing Credit Allocation and Certification
 (Rev. December 2009)
 Department of the Treasury Internal Revenue Service
 ▶ See separate instructions. OMB No. 1540-0068

Part I Allocation of Credit
 Check if Addition to Qualified Basis Amended Form

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)

TIN ▶

1a Date of allocation ▶.....	b Maximum housing credit dollar amount allowable	1b	
2 Maximum applicable credit percentage allowable (see instructions)		2	%
3a Maximum qualified basis		3a	
b If the eligible basis used in the computation of line 3a was increased, check the applicable box and enter the percentage to which the eligible basis was increased (see instructions)		3b	1 -- %
<input type="checkbox"/> Building located in the Gulf Opportunity (GO) Zone, RITA GO Zone, or WITRA GO Zone			
<input type="checkbox"/> Section 42(d)(5)(B) high cost area provisions			
4 Percentage of the aggregate basis financed by tax-exempt bonds. (If zero, enter -0-)		4	%
5 Date building placed in service ▶			
6 Check the boxes that describe the allocation for the building (check those that apply):			
a <input type="checkbox"/> Newly constructed and federally subsidized b <input type="checkbox"/> Newly constructed and not federally subsidized c <input type="checkbox"/> Existing building			
d <input type="checkbox"/> Sec. 42(e) rehabilitation expenditures federally subsidized e <input type="checkbox"/> Sec. 42(e) rehabilitation expenditures not federally subsidized			
f <input type="checkbox"/> Not federally subsidized by reason of 42-50 rule under sec. 4250(e) g <input type="checkbox"/> Allocation subject to nonprofit set-aside under sec. 421(b)			

Signature of Authorized Housing Credit Agency Official—Completed by Housing Credit Agency Only

Under penalties of perjury, I declare that the allocation made is in compliance with the requirements of section 42 of the Internal Revenue Code, and that I have examined this form and to the best of my knowledge and belief, the information is true, correct, and complete.

Signature of authorized official Name (please type or print) Date

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

8a Original qualified basis of the building at close of first year of credit period 8a

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

8b If box 6a or box 6d is checked, do you elect to reduce eligible basis under section 421(b)? Yes No

b For market-rate units above the average quality standards of low-income units in the building, do you elect

See also, correct, and complete.

Signature Taxpayer identification number Date

Name (please type or print) TIN year

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions. Cat. No. 83181U Form 8609 (Rev. 12-2009)

c Elect minimum set-aside requirement (section 42(g)) (see instructions):
 20-50 40-60 Average income 25-60 (N.Y.C. only)

Form 8609, Line 10c

Minimum Set-Asides

Pre-March 23rd

Set aside at least **20% of units** in a project to be rent restricted for households with incomes at or below **50% of area median income**

OR

NOW!

Set aside at least **40% of units** in a project to be rent restricted for households with incomes at or below **60% of area median income**

OR

Set aside at least **40% of units** in a project to be rent restricted and have household income limits (designated in 10% increments from 20% to 80%) that on average are at or below **60% of area median income**

Which properties are eligible (effective date)?

Status of Property	Federal	Allocating Agency

Minimum Set-Asides

Internal Revenue Code Section 42

(g) **Qualified low-income housing project.** For purposes of this section —

(1) **In general.** The term “qualified low-income housing project” means any project for residential rental property if the project meets the requirements of ~~subparagraph (A) or (B)~~ subparagraph (A), (B), or (C) whichever is elected by the taxpayer.

(A) **20-50 test.** The project meets the requirements of this subparagraph if 20 percent or more of the residential units in such project are both rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income.

(B) **40-60 test.** The project meets the requirements of this subparagraph if 40 percent or more of the residential units in such project are both rent-restricted and occupied by individuals whose income is 60 percent or less of area median gross income. Any election under this paragraph, once made, shall

shall not be treated as failing to be
ing in which such property is located is

(C) Average income test. —

40 percent or more

(1) **In general.** The project meets the minimum requirements of this subparagraph if more than 40 percent or more in the case of a project described in section 42(b)(1)(B)(ii) of the residential units in such project 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.

(I) Designation. The taxpayer shall designate the imputed income limitation of each unit taken into account under such clause.

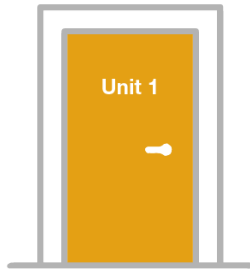
(II) Average test. The average of the imputed income limitations designated under subclause (I) shall not exceed 60 percent of area median gross income.

(III) 10-percent increments. The designated imputed income limitation of any unit under subclause (I) shall be 20 percent, 30 percent, 40 percent, 50 percent, 60 percent, 70 percent, or 80 percent of area median gross income.

IRC § 42(g)

Designating Units

- Must be 20%, 30%, 40%, 50%, 60%, 70% or 80% (**both rent and income**)
- Can reach 60% average in a number of ways
- No federal requirement to designate a pro-rata share among bedroom sizes
- Agencies could adopt policies that are more restrictive

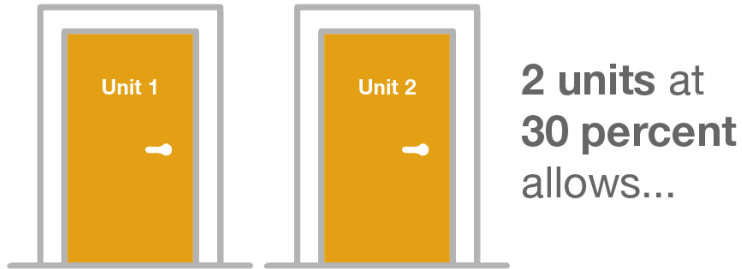


1 unit at 20 percent allows...

OR...

Designating Units

- Must be 20%, 30%, 40%, 50%, 60%, 70% or 80% (**both rent and income**)
- Can reach 60% average in a number of ways
- No federal requirement to designate a pro-rata share among bedroom sizes
- Agencies could adopt policies that are more restrictive



OR...

Failing the Minimum Set-Aside

Scenario

- Single-building, 100% LIHTC project utilizing income averaging
- Nine equally sized units—3 units at 20% AMI and 6 units at 80% AMI
- One of the **20% AMI units** becomes unqualified
- **Question: What is the effect on the minimum set-aside?**
- **Answer: We don't know yet!**

A few possible interpretations:

1. The minimum set-aside is failed!
2. Only the 20% unit is out of compliance
3. Other units should be excluded to bring the average back to 60%

