

A stylized illustration of a lantern with a lit candle inside, sitting on a white pedestal. The lantern is drawn with teal outlines and has an orange glow from the candle. The background is a solid green color.

2019 Boston

ANNUAL CONFERENCE
& SHOWPLACE

Hot Topics in Housing Credit Compliance

Stephanie Naquin

Multifamily Compliance

Novogradac & Company, LLP

stephanie.Naquin@novoco.com



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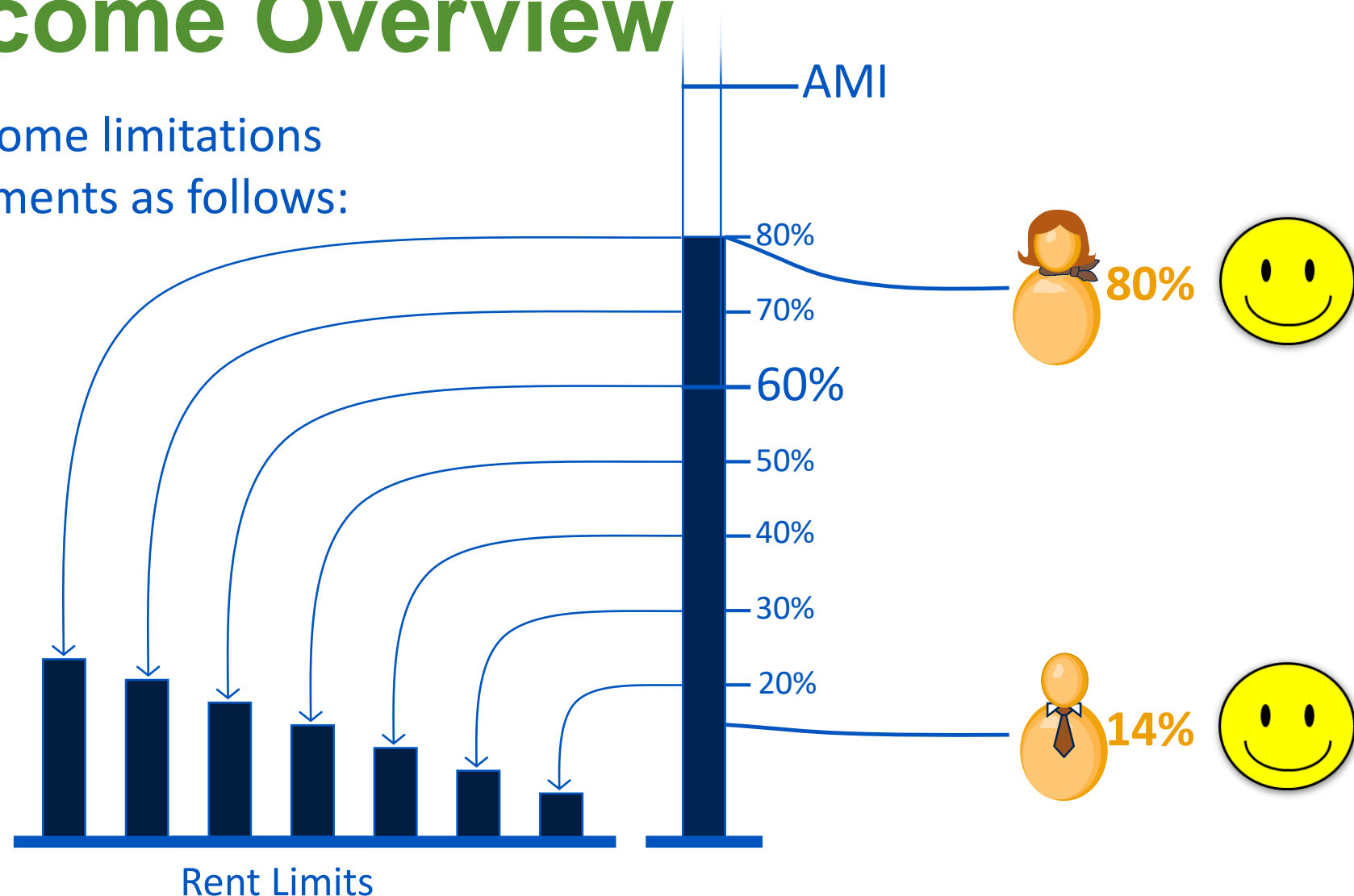
Average Income Overview

- March 23, 2018 – The Consolidated Appropriations Act of 2018 added a **new, third minimum set-aside option** beyond the 20-at-50 and 40-at-60 set-asides. The third option creates an **Average Income test** as follows:
- At least 40 percent of a project's units have to be “both rent-restricted and occupied by individuals whose incomes do not exceed the imputed income limitation designated by the taxpayer with respect to the respective unit” IRC §42(g)(1)(C)(i)
- The average of the imputed income limitations designated ***cannot exceed 60 percent of AMI***

Average Income Overview

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



Average Income Overview

Form 8609, Line 10c

Form 8609 Low-Income Housing Credit Allocation and Certification
 (Rev. May 2018) Department of the Treasury Internal Revenue Service
 OMB No. 1545-0988
 ▶ Go to www.irs.gov/Form8609 for instructions and the latest information.

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 ▶ **1b** Maximum housing credit dollar amount allowable

2 Maximum applicable credit percentage allowable (see instructions) %

3a Maximum qualified basis

b Check here ☐ If the eligible basis used in the computation of line 3a was increased under the high-cost area provisions of section 42(d)(5)(B). Enter the percentage to which the eligible basis was increased (see instructions)

3b 1 %

4 Percentage of the aggregate basis financed by tax-exempt bonds. (If zero, enter -0-) %

5 Date building placed in service

6 Check the boxes that describe the allocation for the building (check those that apply):

a ☐ Newly constructed and federally subsidized **b** ☐ Newly constructed and not federally subsidized **c** ☐ Existing building

d ☐ Sec. 42(e) rehabilitation expenditures federally subsidized **e** ☐ Sec. 42(e) rehabilitation expenditures not federally subsidized

f ☐ Allocation subject to nonprofit set-aside under sec. 42(h)(5)

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)

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

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

9a If box 6a or box 6d is checked, do you elect to reduce eligible basis under section 42(i)(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)(2)(B)? ☐ 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)

Signature Taxpayer identification number Date

Name (please type or print) First year of the credit period

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions. Cat. No. 63981U Form **8609** (Rev. 05-2018)

Unit Designation

(I) a waiver is granted under subsection (d)(6)(B) with respect to the acquisition of the building, and
(II) a credit would be allowed for rehabilitation expenditures with respect to such building if subsection (e)(3)(A)(ii)(I) did not apply and if the dollar amount in effect under subsection (e)(3)(A)(ii)(II) were two-thirds of such amount.

(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), (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.

(C) Average income test

The project meets the minimum requirements of this subparagraph if 40 percent or more (25 percent or more in the case of a project described in section 142(d)(6)) 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 unit.

(ii) Special rules relating to income limitation

(I) Designation

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

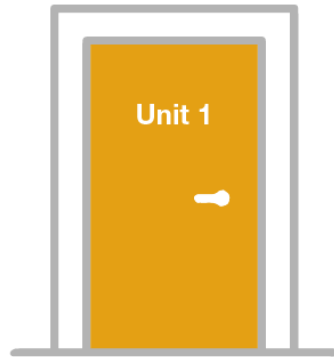
Any election under this paragraph, once made, shall be irrevocable. For purposes of this paragraph, any property shall not be treated as failing to be residential rental property merely because part of the building in which such property is located is used for purposes other than residential rental purposes.

(2) Rent-restricted units

(A) In general

Unit Designation

- 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

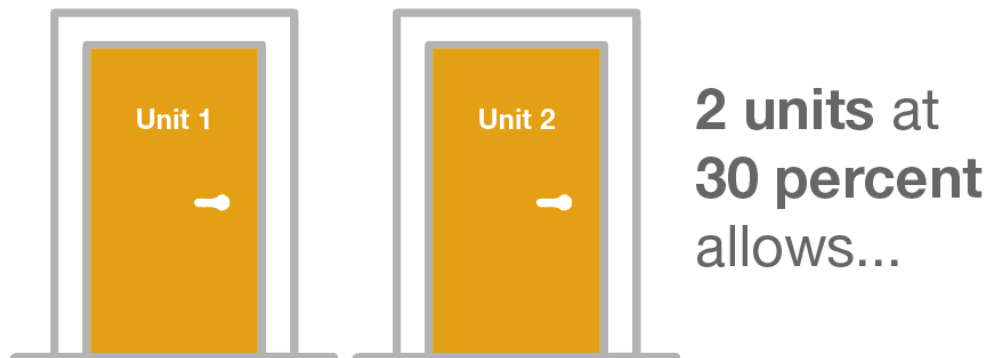


1 unit at 20 percent allows...

OR...

Unit Designation

- 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



OR...

Designating Units

- Formal or informal?
- Are the designations approved or submitted to anyone (e.g. IRS, state agency)?
- How (and when) does designation occur?
- Can units change designations and, if so, how?

Unit Designation

Example 1

80%	40%
50%	70%

AVG = 60%



Example 2

Market	Market
Market	Market
Market	Market
80%	40%
50%	70%

AVG = 60%

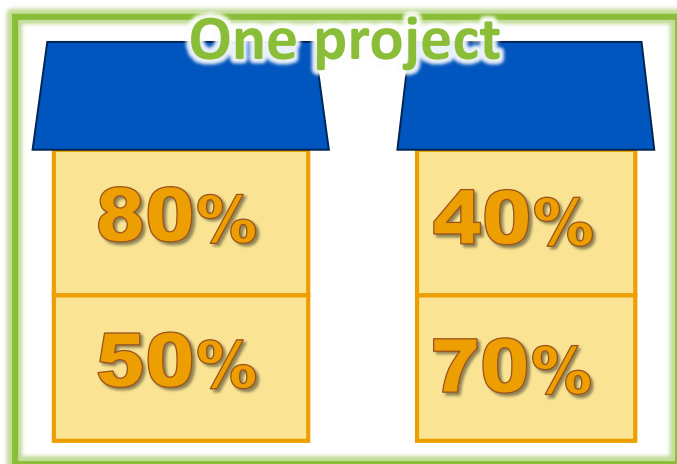
40% of units

Unit Designation

Example 3

One project

AVG =
65%



AVG =
55%

AVG = 60%



Example 2

Market	Market
Market	Market
Market	Market
80%	40%
50%	70%

40% of units

AVG = 60%

(I) a waiver is granted under subsection (d)(6)(B) with respect to the acquisition of the building, and
(II) a credit would be allowed for rehabilitation expenditures with respect to such building if subsection (e)(3)(A)(ii)(I) did not apply and if the dollar amount in effect under subsection (e)(3)(A)(ii)(II) were two-thirds of such amount.

(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), (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.

(C) Average income test

(i) In general

The project meets the minimum requirements of this subparagraph if 40 percent or more (25 percent or more in the case of a project described in section 142(d)(6)) 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 unit.

(ii) Special rules relating to income limitation

For purposes of clause (i)-

(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 subclass (I) shall not exceed 60 percent of area median gross income.

(III) 10-percent increments

The designated imputed income limitation of any unit under subclass (I) shall be 20 percent, 50 percent, 40 percent, 50 percent, 60 percent, 70 percent, or 80 percent of area median gross income.

Any election under this paragraph, once made, shall be irrevocable. For purposes of this paragraph, any property shall not be treated as failing to be residential rental property merely because part of the building in which such property is located is used for purposes other than residential rental purposes.

(2) Rent-restricted units

(A) In general

IRC § 42(g)(1)

(C) Average income test

(i) In general

The project meets the minimum requirements of this subparagraph if 40 percent or more (25 percent or more in the case of a project described in section 142(d)(6)) 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 unit.

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For purposes of clause (i)-

(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.

IRC § 42(g)(1)

(C) Average income test

(i) In general

The project meets the minimum requirements of this subparagraph if 40 percent or more (25 percent or more in the case of a project described in section 142(d)(6)) 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 unit.

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(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.

IRC § 42(g)(1)

Minimum Set-Aside vs. Applicable Fraction

Any credits at all?

①

How many credits?

Project

②

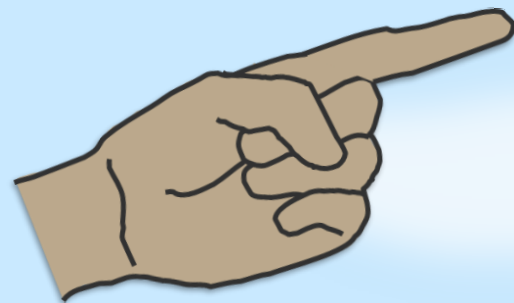
Individual building

Unit % only

③

Lesser of “unit fraction” and
“floor space fraction”

No change!



Single-Building Project

50%	70%
50%	70%
50%	70%
50%	70%
50%	70%

% of units
designated

100%

Imputed Income Avg. of
designated units

58.80%

(C) Average income test

(i) In general

The project meets the minimum requirements of this subparagraph if 40 percent or more (25 percent or more in the case of a project described in section 142(d)(6)) 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 unit.

(ii) Special rules relating to income limitation

For purposes of clause (i)-

(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.

IRC § 42(g)(1)

Single-Building Project

50%	70%
50%	70%
50%	70%
50%	70%
50%	70%

% of units
designated

100%

Imputed Income Avg. of
designated units

60%

(C) Average income test

(i) In general

The project meets the minimum requirements of this subparagraph if 40 percent or more (25 percent or more in the case of a project described in section 142(d)(6)) 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 unit.

(ii) Special rules relating to income limitation

For purposes of clause (i)-

(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.

IRC § 42(g)(1)



50%	70%
50%	70%
50%	70%
50%	70%
50%	70%



50%	70%
50%	70%
50%	70%
50%	70%
50%	70%



50%	70%
50%	70%
50%	70%
50%	70%
50%	70%

The minimum set-aside has always been a cliff test:

FAIL

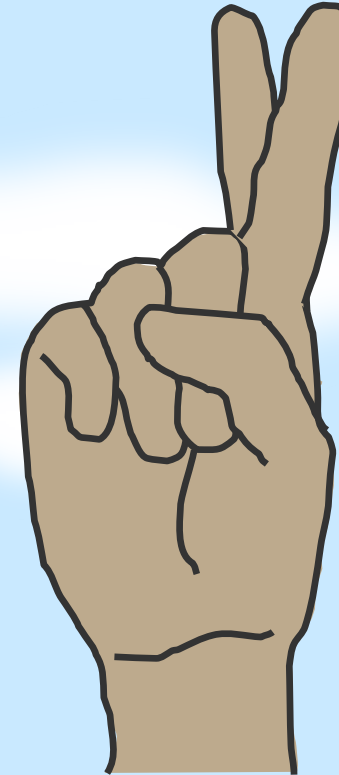
MKT	MKT
MKT	MKT
MKT	MKT
60%	60%
60%	60%



[assume one, single-
building project at
40-60 set-aside]

Where is the cliff with average income?

AVG: 61.11%	
50%	70%
50%	70%
50%	70%
50%	70%
50%	70%



Where is the cliff with average income?

AVG: 61.11%	
50%	70%
50%	70%
50%	70%
50%	70%
50%	70%

The minimum set-aside is satisfied!

Where is the cliff with average income?

AVG: 61.11%	
50%	70%
50%	70%
50%	70%
50%	70%
50%	70%

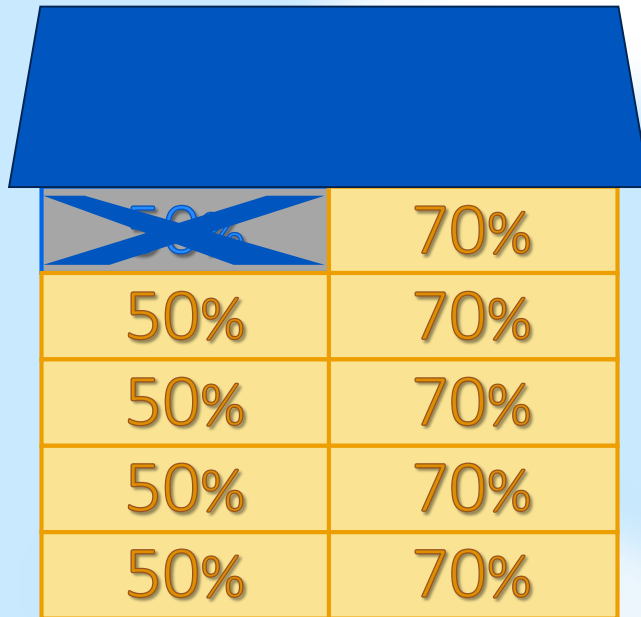
Two camps:

Code Literalists

Minimum Set-Aside
Loyalists

Where is the cliff with average income?

Code Literalists:



50%	70%
50%	70%
50%	70%
50%	70%
50%	70%

(f) a waiver is granted under subsection (d)(6)(B) with respect to the acquisition of the building, and
(ii) a credit would be allowed for rehabilitation expenditures with respect to such building if subsection (e)(3)(A)(ii)(I) did not apply and if the dollar amount in effect under subsection (e)(3)(A)(ii)(II) were two-thirds of such amount.

(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), (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.

(C) Average income test

(i) In general

The project meets the minimum requirements of this subparagraph if 40 percent or more (25 percent or more in the case of a project described in section 142(d)(6)) 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 unit.

(ii) Special rules relating to income limitation

For purposes of clause (i)-

(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 subclass (I) shall not exceed 60 percent of area median gross income.

(III) 10-percent increments

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

Any election under this paragraph, once made, shall be irrevocable. For purposes of this paragraph, any property shall not be treated as failing to be residential rental property merely because part of the building in which such property is located is used for purposes other than residential rental purposes.

(2) Rent-restricted units

(A) In general

IRC § 42(g)(1)

Where is the cliff with average income?

(C) Average income test

(i) In general

The project meets the minimum requirements of this subparagraph if **40 percent or more** (25 percent or more in the case of a project described in section 142(d)(6)) 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 unit.

(ii) Special rules relating to income limitation

For purposes of clause (i)-

(I) Designation

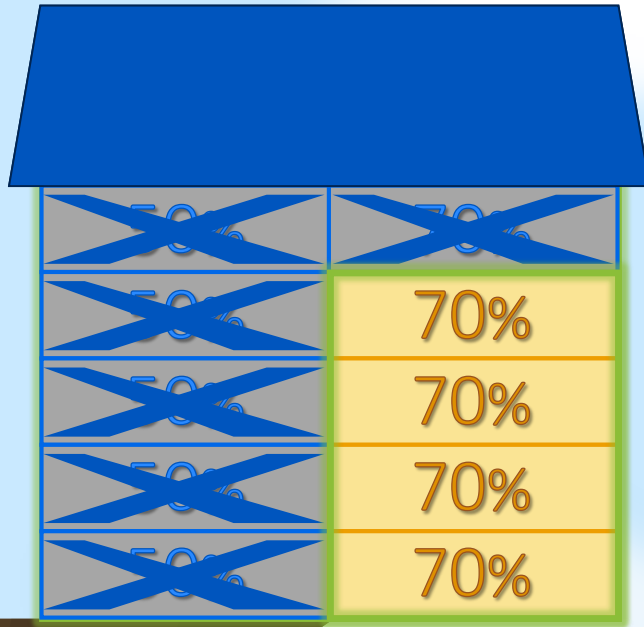
The taxpayer shall designate the imputed income limitation of each unit taken into account under such clause.

(II) Average test

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

IRC § 42(g)(1)

Where is the cliff with average income?



A house with a blue roof sits on the edge of a brown cliff. On the cliff is a table with two columns. The left column has five rows, each with a grey box containing '50%' and a blue 'X' over it. The right column has five rows, each with a yellow box containing '70%'. The table is outlined in green.

50%	70%
50%	70%
50%	70%
50%	70%
50%	70%

Code Literalists:

“All units are still *designated* to have income limits averaging 60% or less.”

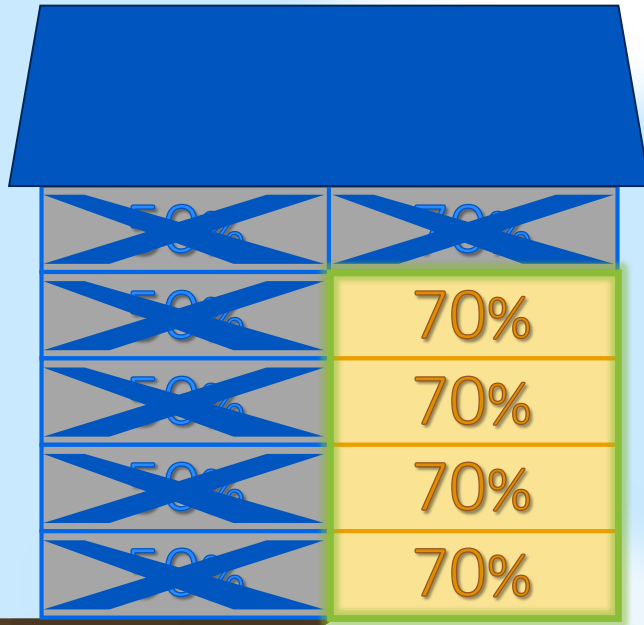
“At least 40% of units are still meeting *their designation.*”

“The code doesn’t say that being out of compliance makes a unit lose its designation.”

still

“The minimum set-aside is *still* satisfied.”

Where is the cliff with average income?



50%	70%
50%	70%
50%	70%
50%	70%
50%	70%

Minimum Set-aside for Specialists:

“All units are still **designated** to have income limits averaging 60% or less.”

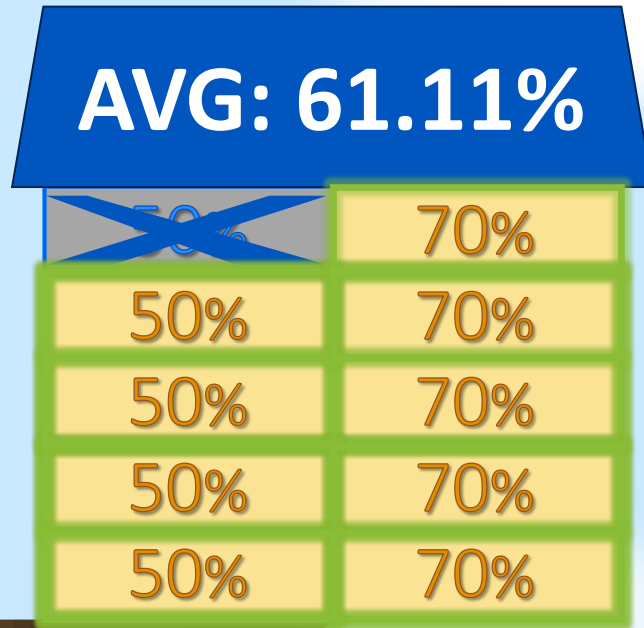
“At least 40% of units are still meeting their designation.”

“The code doesn’t say that being out of compliance makes a unit lose its designation.”

still

“The minimum set-aside is **satisfied.**”

Where is the cliff with average income?



AVG: 61.11%	
50%	70%
50%	70%
50%	70%
50%	70%
50%	70%

Minimum Set-Aside Loyalists:

“At least 40% of the units are meeting their designation...and the designations of those units used for the minimum set-aside test have income limits averaging 60% or less.”

“The minimum set-aside is satisfied.”

Applicable Fraction...

AVG: 61.11%

50%	70%
50%	70%
50%	70%
50%	70%
50%	70%

Applicable Fraction...

Minimum Set-Aside Loyalists:

“Discount unit(s) necessary to bring average of remaining units to $\leq 60\%$ ”

“Claim credits only on units that collectively are meeting the average of $\leq 60\%$ ”

FAIL

AVG: 60%	
50%	70%
50%	70%
50%	70%
50%	70%
50%	70%

Applicable Fraction

$$\frac{3}{10} = 30\%$$

Applicable Fraction...

Code Literalists:

“If the minimum set-aside is satisfied... claim credits on all units meeting their designation.”



50%	70%
50%	70%
50%	70%
50%	70%
50%	70%

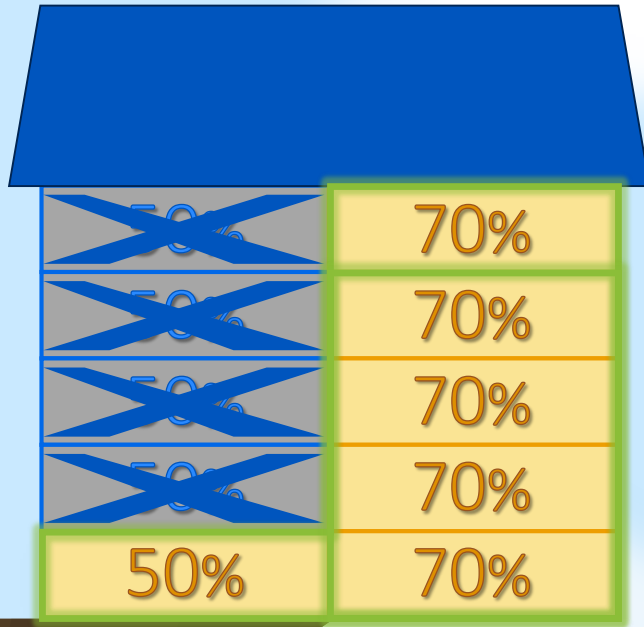
Applicable Fraction

$$\frac{9}{10} = 90\%$$

Applicable Fraction...

Code Literalists:

“If the minimum set-aside is satisfied... claim credits on all units meeting their designation.”



50%	70%
50%	70%
50%	70%
50%	70%
50%	70%

Applicable Fraction

$$\frac{6}{10} = 60\%$$

Applicable Fraction...

Minimum Set-Asides:

"If the minimum set-aside is satisfied... claim credits on all units meeting their designation."

FAIL

50%	70%
50%	70%
50%	70%
50%	70%
50%	70%

50%	50%	50%	50%	50%
70%	70%	70%	70%	70%

Applicable Fraction

$$\frac{6}{10} = 60\%$$

Third camp...

Minimum Set-Aside Loyalists:

Minimum Set-Aside Loyalists for the minimum set-aside test for the project

Code Literalists for meeting the applicable fraction(s) for the building(s)

FAIL

50%	70%
50%	70%
50%	70%
50%	70%
50%	70%

Applicable Fraction

$$\frac{7}{10} = 70\%$$

30%

STATE: ALABAMA

-----S E C T I O N 8 I N C

	PROGRAM	1 PERSON	2 PERSON	3 PERSON	4 PERSON
Anniston-Oxford-Jacksonville, AL MSA					
FY 2017 MFI: 53000	EXTR LOW INCOME	12060	16240	20420	24600
	VERY LOW INCOME	17600	20100	22600	25100
	LOW-INCOME	28150	32150	36150	40150
Auburn-Opelika, AL MSA					
FY 2017 MFI: 59200	EXTR LOW INCOME	12450	16240	20420	24600
	VERY LOW INCOME	20750	23700	26650	29600
	LOW-INCOME	33150	37900	42650	47350

Daphne-Fairhope-Foley, AL MSA	LOW-INCOME	29900	34200	38450	42700	46150	49550	52950	56400
FY 2017 MFI: 61500	EXTR LOW INCOME	12950	16240	20420	24600	28780	32960	37140	40600
	VERY LOW INCOME	21550	24600	27700	30750	33250	35700	38150	40600
	LOW-INCOME	34450	39400	44300	49200	53150	57100	61050	64950
Decatur, AL MSA	EXTR LOW INCOME	12150	16240	20420	24600	28780	32960	35800	38100
FY 2017 MFI: 57700	VERY LOW INCOME	20200	23100	26000	28850	31200	33500	35800	38100
	LOW-INCOME	32350	36950	41550	46150	49850	53550	57250	60950
Dothan, AL MSA	EXTR LOW INCOME	12060	16240	20420	24600	27400	29450	31450	33500
FY 2017 MFI: 50700	VERY LOW INCOME	17750	20300	22850	25350	27400	29450	31450	33500
	LOW-INCOME	28400	32450	36500	40550	43800	47050	50300	53550
Henry County, AL HMFA	EXTR LOW INCOME	12250	16240	20420	24600	28780	32960	36150	38500
FY 2017 MFI: 58300	VERY LOW INCOME	20450	23350	26250	29150	32000	33850	36150	38500
	LOW-INCOME	32700	37350	42000	46650	50400	54150	57850	61600
Florence-Muscle Shoals, AL MSA	EXTR LOW INCOME	12060	16240	20420	24600	28780	31050	33200	35350
FY 2017 MFI: 53500	VERY LOW INCOME	18750	21400	24100	26750	28900	31050	33200	35350
	LOW-INCOME	30000	34250	38550	42800	46250	49650	53100	56500

$$25,100 \times 2 \times 0.3 = 15,060$$

$$\text{ELI ("30\%")} = 24,600 \approx 98\% \text{ of VLI??}$$

www.huduser.gov → Section 8 Income Limits

30% AMI vs. Extremely Low Income

Extremely Low Income is the greater of the 30% Limit or the Poverty Level
(note adjustment done at each household size)

...but in no case can the ELI be greater than VLI

STATE: ALABAMA			-----S E C T I O N 8 I N C			
PROGRAM			1 PERSON	2 PERSON	3 PERSON	4 PERSON
Anniston-Oxford-Jacksonville, AL MSA						
FY 2017 MFI: 53000	EXTR LOW INCOME		12060	16240	20420	24600
	VERY LOW INCOME		17600	20100	22600	25100
	LOW-INCOME		28150	32150	36150	40150
Auburn-Opelika, AL MSA						
FY 2017 MFI: 59200	EXTR LOW INCOME		12450	16240	20420	24600
	VERY LOW INCOME		20750	23700	26650	29600
	LOW-INCOME		33150	37900	42650	47350

80% AMI vs. “Low Income”

Low Income may not exceed the U.S. median family income level (\$71,900 for FY 2018) except when justified by high housing costs.

PROGRAM		1 PERSON	2 PERSON	3 PERSON	4 PERSON
Washington-Arlington-Alexandria, DC-VA-M					
Washington-Arlington-Alexandria, DC-VA-MD HMFA					
FY 2018 MFI: 117200	EXTR LOW INCOME	24650	28150	31650	35150
	VERY LOW INCOME	41050	46900	52750	58600
	LOW-INCOME	54250	62000	69750	77450

≈ 66% of AMI

$$\frac{58,600 \times 2 \times .8}{80\% = 93,760}$$

$$LI = 77,450$$