



US Housing
CONSULTANTS

The Not So “Average Income” Set-Aside



CONQUERING LIHTC COMPLIANCE:

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Note: There may be areas of the manual that will not be covered during the allotted time and the information is supplied as supplemental information.

CONQUERING LIHTC COMPLIANCE: The Not So “Average Income” Set-Aside

REFERENCES & NOTES

Session Overview

The focus of this session to review understand the application of the final regulation (1.42-19) regarding the Average Income Minimum Set-Aside Test.

In course we will cover the following topics:

1. Highlights of the New Final Regulation
2. Annual Credit Calculation Refresher (Applicable Fraction)
3. Minimum Set Aside & Average Income Test Basics
4. Average Income Unit Group and the Applicable Fraction Unit Group
5. Unit Designations and Unit Transfers
6. Correcting Non-compliance
7. Next Available Unit Rule
8. Record-Keeping

CONQUERING LIHTC COMPLIANCE: The Not So “Average Income” Set-Aside

REFERENCES & NOTES

1. Highlights of the New Final Regulation

What Changed?

Using “Qualified Groups of Units” to Meet Average Income (AI) Test

Most notably, it is not required to include all low-income units in the project when determining AIT compliance. In the proposed 2020 regulation, a single out-of-compliance unit at 100% AIT project, could cause the project to be in violation of the of the Average Income Test, which would have resulted in a dire tax credit loss for the project. The requirements in the proposed regulation created a stark disparity in the consequences when compared to the impact of non-compliance at a 40-60 or 20-50 project. The final regulation essentially eliminates the possibility that one single out-of-compliance unit at a 100%, AIT project, would cause the project to violate the AIT.

This is a very welcome change, as the consequences of not meeting the AIT initially for an AIT project, would result in the permanent loss of the credits for the project. For AI projects that initially met the AIT, but subsequently violated the test, it results in loss of credits for the project for the given tax year.

Under the new regulation, the AIT is met if:

- The taxpayer-identified a “qualified group” of 40% of the project’s units having income limit levels averaging 60% or less
- The qualified AIT group is identified timely each taxable year of the extended use period, and maintains these records in accordance with the record retention requirements found in Treasury Regulation 1.42-5(b)(2)
- The units in the qualified AIT group are rent-restricted
- The units in the qualified AIT group are occupied by qualified households.

Units Included in Applicable Fraction Determination

The final regulations incorporated the definition of a low-income unit for purposes of the AIT to also be used for purposes of determining the Applicable Fraction.

The final regulations requires that the taxpayer identify a “group of qualified units” (herein referred to as the AF Qualified Unit Group) to be used for purposes of determining the applicable fraction. The definition of a “qualified group of units” for purpose of the AIT Qualified Unit Group is the **same definition** to be used for the Applicable Fraction Qualified Unit Group. This definition is found in 1.42-19(b) (2) and states that a group of units is considered a “qualified group of units” if:

- ❑ The rents for the units included in the group are rent-restricted
- ❑ The household occupying the units included in the group are qualified households under the specific imputed income limitation designated to the unit
- ❑ The average of the imputed income limitations for the units included in the group average 60% or less.

It should be noted that the units included in the Applicable Fraction Qualified Unit Group can include, but are not required to include, the units included in the AIT Qualified Unit Group. Furthermore, for multiple building projects (per the 8(b) election on the IRS form 8609), the units to be included in the Applicable Fraction Qualified Unit Group are not limited to one BIN (building Identification Number) and can span across multiple BINs.

Under the new regulation, each taxable year throughout the extended use period, the taxpayer will need to identify which units are to be included within each group.

CONQUERING LIHTC COMPLIANCE: The Not So “Average Income” Set-Aside

REFERENCES & NOTES

1. Highlights of the New Final Regulation, cont.

Floating of Unit Designations

The 2020 proposed regulation stipulated that once a unit was designated a specific income limit level designation, the designation could not be changed. By not allowing the designations to change, or float, the proposed regulation created additional and unnecessary barriers when a household needed to transfer units due to an emergency transfer under VAWA or due to a Reasonable Accommodation under the Fair Housing Act. Further, it restricted the ability to correct potential AIT violations or qualified basis violations by not allowing the changing of a unit's designation in order to restore compliance.

The final regulation removes this blanket prohibition and instead gives State Housing Finance Agencies (HFAs) broad discretion to develop policies and procedures regarding unit designation changes and permits the changing of unit designations when needed for a unit transfer for a tenant under an Act or program providing tenant protections.

Application of the Next Available Unit Rule (NAUR) in AIT Projects

The 2020 proposed regulation's application of the NAUR, was based on the prohibition on changing unit designations and the Mitigating Actions. Since the requirement that prohibited the changing of unit designations was amended, and as the section on Mitigating Actions was removed, the NAUR was amended in 1.42-15 to reflect these changes.

The NAUR was amended to require that the next available **market rent unit** being used to satisfy the NAUR, be rented and re-designated to an income limit designation that will maintain compliance with the AIT, instead of the income limit level that was designated to the over-income unit that initially triggered the application of the Next Available Unit Rule.

The final regulation carries over the provision that the NAUR does not have to be followed in any specific order when multiple low-income units are determined to be over-income, but that the order used could impact the “group of qualified units” used for the applicable fraction.

Removal of Mitigation Actions and Timeframe to Address Noncompliance

The final regulation removed the Mitigating Actions that stipulated that any issues of non-compliance impacting the AIT could only be remedied if the issue of non-compliance was corrected and the AIT restored within 60 days of the close of the taxable year. The timeframe provided under the proposed 2020 regulations to address the minimum-set aside violation for AIT projects, was stricter than the remedies available for projects that had elected on of the classic set-aside (i.e., 20-50, 40-60).

Introduced Temporary Regulations Regarding Recording Keeping

Includes temporary regulations regarding the record-keeping and reporting of AIT unit designations to State Housing Finance Agencies.

CONQUERING LIHTC COMPLIANCE: The Not So “Average Income” Set-Aside

REFERENCES & NOTES

2. Annual Credit Calculation

Annual Credit Calculation

A formula is used to determine the amount of credits that an owner is eligible to claim throughout the 10-year Credit Period. The credit amount is calculated for each low-income building in a project.

Each building has a “BIN,” a Building Identification Number. **Example – CA-14-12345**
The first two *letters* represent the state the BIN is in, and the first two *numbers* represent the year the BIN was allocated credits.

Annual Credit Formula:

Eligible Basis X **Applicable Fraction**
= **Qualified Basis**

Qualified Basis X **Applicable Credit %**
= **Annual Tax Credit**



Applicable Fraction

The Applicable Fraction, which is expressed as a percentage, reflects the fraction of the residential portion of the project that is actually housing low-income individuals.

Eligible Basis X **Applicable Fraction**
= **Qualified Basis**

Qualified Basis X **Applicable Credit %**
= **Annual Tax Credit**

§42 (c)(1)(B)

The Applicable Fraction is determined by the lesser of the following two calculations:

1. Total Tax Credit Units divided by all residential units $\frac{\text{Total Tax Credit Units}}{\text{All Units}}$
2. Total Tax Credit square feet divided by all residential square feet $\frac{\text{Total Tax Credit Sq. Ft.}}{\text{All Unit Sq. Ft.}}$

Expressing a Fraction as a Percentage

Once the fraction is converted into a decimal (i.e., $6 / 9 = .66666$), carry out the answer 4 decimal points, making sure to round the last number (i.e., .6667) and move the decimal point two places to the right (66.67%).

§42 (c)(1)(B)

Included in calculation:

- **All residential units, this includes:**
- **Model units**
 - Model units are residential units, even if never occupied.
 - The cost of the model unit can be included in Eligible Basis.
 - Model units are never considered a tax credit unit unless the unit is rented to a low-income tenant.

PLR 9330013

8823 Guide Page 8-6

Excluded from calculation:

- **Common areas and any non-residential areas**
- **Exempt Employee unit**
 - Exempt Employee units are commonly referred to as a “manager’s unit.”
 - Exempt Employee units must be occupied by full-time employees of the property (manager, maintenance staff or security staff).

§IRS Newsletter 14

Rev. Rul 92-61

Rev. Rul 04-82

CONQUERING LIHTC COMPLIANCE: The Not So “Average Income” Set-Aside

REFERENCES & NOTES

2. Annual Credit Calculation, cont.

Eligible Basis X Applicable Fraction
= Qualified Basis

Qualified Basis X Applicable Credit %
= Annual Tax Credit

Applicable Fraction, cont.

Example – Determining Applicable Fraction – All units are the same sq. ft.

A Building has 10 units total. All units are 1,000 sq. ft.

→ 5 of the units are tax credit units

Since all units in the building are the same sq. ft., the Applicable Fraction can be calculated using only units.

5 tax credit units

Formula: $\frac{5 \text{ tax credit units}}{10 \text{ total units}} = .5000$ Applicable Fraction **50%**

Example – Determining Applicable Fraction – Varying Unit Sizes

A Building has 10 units total. 5 units are 500 sq. ft. 1-bedrooms and 5 units are 1,300 sq. ft. 2-bedrooms.

→ 4 of the 1-bedroom units are tax credit units

→ 1 of the 2-bedroom units is a tax credit unit

Since the units in the building are different sizes, the Applicable Fraction must be determined by the lesser of the fraction based on units or square feet.

Unit Formula

5 tax credit units = .5000
Applicable
10 total units Fraction 50%

Sq. Ft Formula

3,300 Tax Credit Sq. Ft. = .3667
Applicable
9,000 total units Sq. Ft. Fraction **36.67%**

Date of Determination

The Applicable Fraction that is reached at the end of the first year of the credit period must be maintained for the entire 15-year compliance period.

The Applicable Fraction is determined based on the number of the low-income units that are in compliance as of the last day of the owner's tax year.

Example – Applicable Fraction

Lakeview Terrace is a single building project. By the end of the first year of the credit period, Lakeview Terrace reached an Applicable Fraction of 100%. The Applicable Fraction of 100% must be maintained throughout the 15-year compliance period.

In December of the 2nd year of the compliance period, a unit at Lakeview Terrace is destroyed by a fire. The unit could not be restored to habitable condition by December 31st, the last day of the owner's tax year. Since the unit was not in compliance as of the last day of the owner's tax year, the unit is considered to be out of compliance for that entire tax year.

In October of the 3rd year of the compliance period, another unit at Lakeview Terrace is destroyed by a fire. The unit was restored to habitable condition by November 30th.

Since the unit was restored to habitable condition prior to the last day of the owner's tax year, the unit is considered to be in compliance for the entire tax year.

CONQUERING LIHTC COMPLIANCE: The Not So “Average Income” Set-Aside

REFERENCES & NOTES

3. Minimum Set Aside & Average Income Test Basics

Minimum Set-Aside Overview

The Minimum Set-Aside election is a required election made by the project owner.

Essentially, the Minimum Set-Aside establishes:

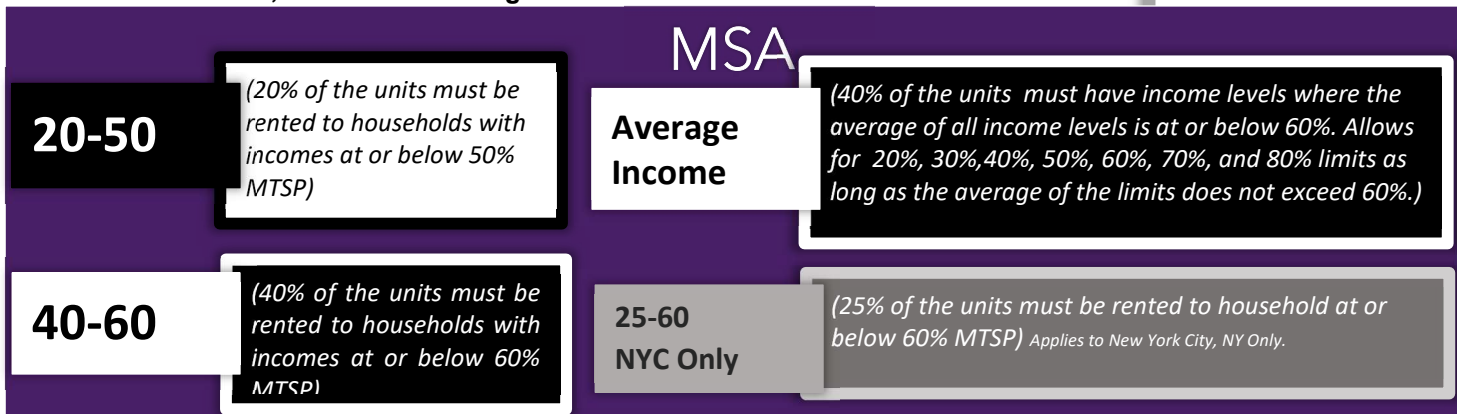
- The **minimum number of units** in the **project** that must be occupied by **LIHTC eligible households and rent-restricted**.
- The **income limitations** applicable to the project

In order for a project to be eligible to claim tax credits, the project must meet the Minimum Set-Aside (MSA) by the end of the first year of the Credit Period. After meeting the initial Minimum Set Aside Test, the owner must maintain the MSA throughout the Compliance Period.

There are **four (4) Minimum Set-Aside elections**: The election of the MSA determines the federal income limit that applies to the project. This election is made by the owner, and **once this election is made, it cannot be changed**.

§42(g)(1)

8823 Guide Chapter 10



Minimum Set-Aside Violations

Initial Test: If the minimum set-aside test is not met by the deadline (by the end of the year placed in service or the end of the next taxable year when credits are deferred), this violation results in a permanent loss of the entire credit. **This non-compliance event cannot be corrected.**

Ongoing Test: If the project meets the minimum set-aside by the end of the first year but fails to meet the minimum set-aside at the close of a subsequent taxable year in the compliance period, the entire credit is lost for that year.



CONQUERING LIHTC COMPLIANCE: The Not So “Average Income” Set-Aside

REFERENCES & NOTES

§42(g)(1)

8823 Guide Chapter 10

3. Minimum Set Aside & Average Income Test Basics, cont.

Minimum Set-Aside Overview, cont.

The Minimum Set-Aside must be met for the project, as defined by the owner’s election on the IRS Form 8609, Item 8b.

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

If the owner answers “Yes” to item b, then the building is treated as a multiple building project, and the MSA is based on the total units **in the project**.

If the owner answers “No” to item b, then each building is considered its own project, and the minimum set-aside is based on the units **in each building**.

Average Income Set-Aside Basics

To meet the Average Income Minimum Set-Aside, 40% or more of the units in a project must have a designated income limit, where the average of the income limits for the LIHTC units does not exceed 60%. This option allows projects to have higher income limits as long as the average of the income limits for all the low-income units does not exceed 60%.

Units may be restricted to:

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

Two-Part Test

Essentially, a two-part test must be met.

❑ Part 1: 40% Qualified Occupancy Test (40% Test)

Taxpayer must identify an “AI Unit Group” that represents 40% of the units in the project that are rent-restricted and occupied by low-income households

❑ Part 2: 60% Average Income Test (60% Test)

The designations assigned to the LIHTC units included in the AI Unit Group must average 60% or less.

ASK YOUR HFA

Many HFAs have additional requirements relating to the Income Average MSA. It is crucial that an owner is fully aware of an HFA’s policies before making this election.

Some of additional requirements may include:

- Restricting the AI MSA Election to 100% LIHTC Projects
- Requiring AI Project owner to elect to treat multiple buildings as a single project.
- Not permitting the AI MSA for Resyndication



CONQUERING LIHTC COMPLIANCE: The Not So “Average Income” Set-Aside

REFERENCES & NOTES

3. Minimum Set Aside & Average Income Test Basics, cont.

§42(g)(1)

8823 Guide Chapter 10

Average Income Set-Aside Basics, cont.

Example 1 – Average Income Method

$$40\% + 40\% + 80\% + 80\% = 240\%$$

$$240\% \div 4 \text{ units} = 60\%$$



Example 2 – Average Income Method

$$30\% + 50\% + 70\% + 80\% = 230\%$$

$$230\% \div 4 \text{ units} = 57.50\%$$



Example 3 – Average Income Method

$$50\% \times 4 \text{ units} = 200\%$$

$$70\% \times 4 \text{ units} = 280\%$$

$$200\% + 280\% = 480\%$$

$$480\% \div 8 \text{ units} = 60\%$$



CONQUERING LIHTC COMPLIANCE: The Not So “Average Income” Set-Aside

REFERENCES & NOTES

4. AI Unit Group & the Applicable Fraction Unit Group

Applicable Fraction	Minimum Set Aside
Based on Lesser of Units or Floor Space	Based On Units Only
Determined Per BIN	Determined Per Project (based on 8609)
Used to Calculate Credit	Used to Determine Program Compliance

Using “Qualified Groups of Units” to Meet AI Test

It is **not** required to include all low-income units in the project when determining AIT compliance.

Under the new regulation, the AIT is met if:

- The taxpayer-identified “qualified group” of 40% of the project’s units have income limit levels averaging 60% or less
- The qualified AIT group is identified timely each taxable year of the extended use period, and maintains these records in accordance with the record retention requirements found in Treasury Regulation 1.42-5(b)(2)
- The taxpayer maintains records of the qualified groups as required
- The units in the qualified AIT group are rent-restricted
- The units in the qualified AIT group are occupied by qualified households.

AVERAGE INCOME GROUP

101	106
80	40
102	107
80	40
103	108
80	40
104	109
80	40
105	110
80	40

Piney Flats

EXAMPLE 1

10 Unit, Single BIN Project – All units are the same size.

40% Test: 10 units x 40% = 4 Units

60% Test: 80 + 80 + 40 + 40 = 240
240 / 4 units = 60%

CONQUERING LIHTC COMPLIANCE: The Not So “Average Income” Set-Aside

REFERENCES & NOTES

4. AI Unit Group & the Applicable Fraction Unit Group, cont.

Units Included Applicable Fraction Determination

The final regulations incorporated the definition of a low-income unit for purposes of the AIT to also be used for purposes of determining the applicable fraction.

The final regulation states that it is no longer necessary to include all low-income unit's imputed income limitation when determining compliance with the AIT, only a “group of a qualified units” representing at least 40% of the units in the project must be used when determine AIT compliance. However, as most projects have low-income units in excess of the 40% required under the minimum set-aside requirement, those excess units are taken into consideration when determining a buildings applicable fraction.

The requirements regarding the Application Fraction in IRC 42(C), reference “low-income units” when determining the numerator of the applicable fraction. The definition of a low-income unit found in IRC 42 (1) refers to the income limitation applicable to the project as cited in 42(g)(1), which is the section of code regarding the Minimum Set-Aside. IRC 42(c). For AIT projects, there is not one specific income limitation as with 20-50 or 40-60 projects. Prior to the publication of the final regulation, it was unclear as to whether a unit had to be included in the 40% unit test in order to also be included in the application fraction calculation, or if a unit would considered low-income as long as the unit was occupied by a household who met the actual income limitation level applicable to the unit.

The lack of clarity surrounding this issue prompted the need for additional guidance from the IRS as to when units, in excess of the units included in the AIT Qualified Unit Group, meet the definition of a low-income unit and therefore can be included in the numerator when determining the applicable fraction for a building.

The IRS addressed this issue in the final regulations by requiring the taxpayer identify a “group of qualified units” (herein referred to as the AF Qualified Unit Group) to be used for purposes of determining the applicable fraction. The definition of a “qualified group of units” for purpose of the AIT Qualified Unit Group is the same definition to be used for the Applicable Fraction Qualified Unit Group. This definition is found in 1.42-19(b)(2) and states that a group of units is considered a “qualified group of units” if:

- The rents for the units included in the group are rent-restricted
- The household occupying the units included in the group are qualified households under the specific imputed income limitation designated to the unit
- The average of the imputed income limitations for the units included in the group average 60% or less.

It should be noted that the units included in the Applicable Fraction Qualified Unit Group can include, but are not required to include, the units included in the AIT Qualified Unit Group. Furthermore, for multiple building projects, the units to be included in the Applicable Fraction Qualified Unit Group are limited to one building and can span across multiple buildings.

CONQUERING LIHTC COMPLIANCE: The Not So “Average Income” Set-Aside

REFERENCES & NOTES

4. AI Unit Group & the Applicable Fraction Unit Group, cont.

Units Included Applicable Fraction Determination, cont.

Piney Flats
EXAMPLE 1

101	106
80	40
102	107
80	40
103	108
80	40
104	109
80	40
105	110
80	40

AVERAGE INCOME GROUP

40% Test: 10 units x 40% = 4 Units

60% Test: 80 + 80 + 40 + 40 = 240

240 / 4 units = 60%

APPLICABLE FRACTION GROUP

60% AF Test: 80 + 80 + 80 + 80 + 80 + 40 + 40 + 40 + 40 + 40 = 600

600 / 10 units = 60%

10 Unit, Multi-BIN Project (8609 8(b) checked yes) – All units are the same size.

Woodland Hills
EXAMPLE 1

BIN A	BIN B
A1	B1
80	40
A2	B2
80	40
A3	B3
40	80
A4	B4
40	80
A5	B5
40	80

AVERAGE INCOME GROUP

40% Test: 10 units x 40% = 4 Units

60% Test: 80 + 80 + 80 + 80 + 40 + 40 + 40 + 40 = 600

600 / 10 units = 60%

APPLICABLE FRACTION GROUP

60% AF Test: 80 + 80 + 80 + 80 + 40 + 40 + 40 + 40 = 600

60 / 10 units = 60%

CONQUERING LIHTC COMPLIANCE: The Not So "Average Income" Set-Aside

REFERENCES & NOTES

4. AI Unit Group & the Applicable Fraction Unit Group, cont.

10 Unit, Multi-BIN Project
(8609 8(b) checked yes)

- Units A1, A2 A3, B1, B2 and B3 are 900 Sq Ft.
- Unit A4, A5, B4 and B5 are 650 Sq Ft.

AVERAGE
INCOME
GROUP

40% Test: 10 units x 40%
= 4 Units

60% Test: 80 + 80 + 40 +
40 = 240

240 / 4 units = 60%

BIN A		BIN B
A1		B1
80		40
A2		B2
40		40
A3		B3
40		80
A4		B4
40		80
A5		B5
MKT		80

City View

EXAMPLE 1

APPLICABLE
FRACTION
GROUP

60% AF Test: 80 + 80 +
80 + 80 + 40 + 40 + 40 +
40 + 40 = 520

520 / 9 units = 57.78%

Annual Credit Calculation

Eligible Basis \$3,000,000 x
Applicable Fraction **80%** =
Qualified Basis \$2,400,000

Qualified Basis \$2,400,000 x
Credit Percentage 9% =

Annual Credit **\$216,000**

BIN A	BIN B
A1	B1
80	40
A2	B2
40	40
A3	B3
40	80
A4	B4
40	80
A5	B5
MKT	80

Eligible Basis \$3,000,000 X
Applicable Fraction **100%** =
Qualified Basis \$3,000,000

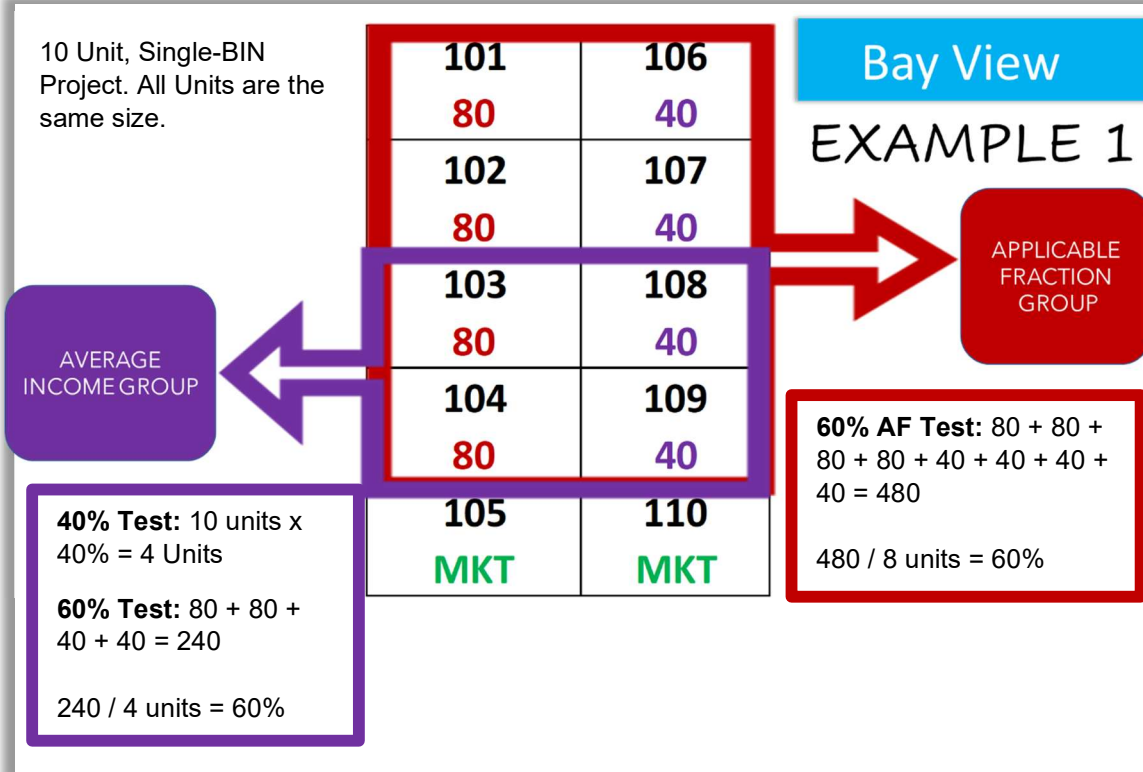
Qualified Basis \$3,000,000 X
Credit Percentage 9% =

Annual Credit **\$270,000**

CONQUERING LIHTC COMPLIANCE: The Not So "Average Income" Set-Aside

REFERENCES & NOTES

4. AI Unit Group & the Applicable Fraction Unit Group, cont.



CONQUERING LIHTC COMPLIANCE: The Not So “Average Income” Set-Aside

REFERENCES & NOTES

5. Unit Designations and Unit Transfers

Floating of Unit Designations

The 2020 proposed regulation stipulated that once a unit was designated a specific income limit level designation, the designation could not be changed. By not allowing the designations to change, or float, the proposed regulation created additional and unnecessary barriers when a household needed to transfer units due to an emergency transfer under VAWA or due to a Reasonable Accommodation under the Fair Housing Act. Furthermore, it restricted the ability to correct potential AIT violations or qualified basis violations by not allowing the changing a unit's designation in order to restore compliance.

The final regulation removes this blanket prohibition and instead gives State Housing Finance Agencies (HFAs) broad discretion to develop policies and procedures regarding unit designation changes and permits the changing of unit designations when needed for a unit transfer for a tenant under an Act or program providing tenant protections.

Unit designations can change under the following circumstances:

- ✓ Federally permitted changes
- ✓ In accordance with HFA policy
- ✓ When the designation change is needed due to unit transfer under:
 - The Violence Against Women Act (VAWA)
 - Fair Housing Act
 - Section 504 of the Rehabilitation Act of 1973
 - Other federal, state or local law affording tenant protections
- ✓ When an income-qualified household tenant transfers to a different unit in the project:
 - In such cases the units swap income level designations.
- ✓ To restore compliance with AIT requirements:
 - A vacant market rate unit can be re-designated as a low-income unit, designated an imputed income limitation, and then rented to a qualified household in order to restore AIT compliance
 - An occupied market rate unit can be re-designated as a low-income unit, designated an imputed income limitation in order to restore AIT compliance, but only if the occupant of said unit meets the designated imputed income limitation
 - The unit designation on a vacant, previously qualified, low-income unit can be reduced to a lower income limit level, and then rented to a qualified household in order to restore AIT compliance
 - The unit designation on an occupied and qualified, low-income unit can be reduced to a lower income limit level in order to restore AIT compliance, but only if the occupant of said unit meets the new, lower designated imputed income limitation.

Timings for Unit Designation Changes

For a vacant unit – The unit's designation must be changed before being occupied.

For an occupied unit – The unit's designation must be changed, prior to the last day of the taxable year.

CONQUERING LIHTC COMPLIANCE: The Not So “Average Income” Set-Aside

REFERENCES & NOTES

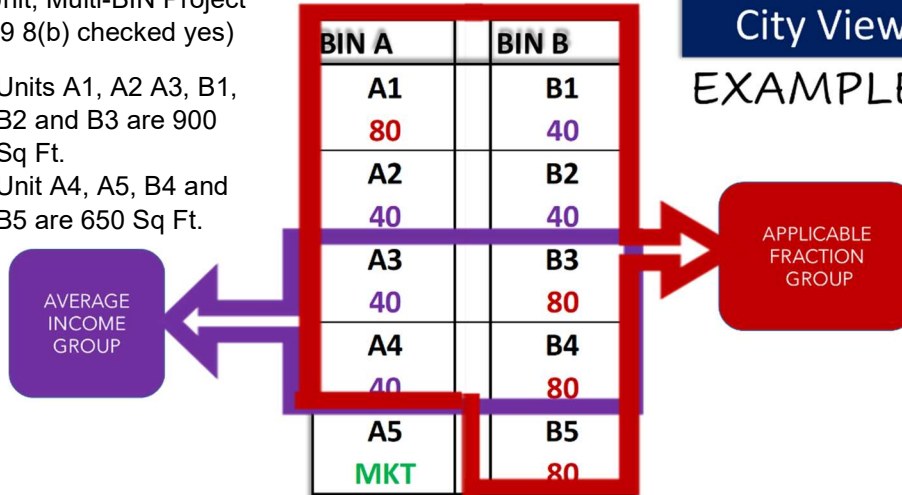
5. Unit Designations and Unit Transfers, cont.

10 Unit, Multi-BIN Project
(8609 8(b) checked yes)

- Units A1, A2 A3, B1, B2 and B3 are 900 Sq Ft.
- Unit A4, A5, B4 and B5 are 650 Sq Ft.

YEAR 1

City View
EXAMPLE 2



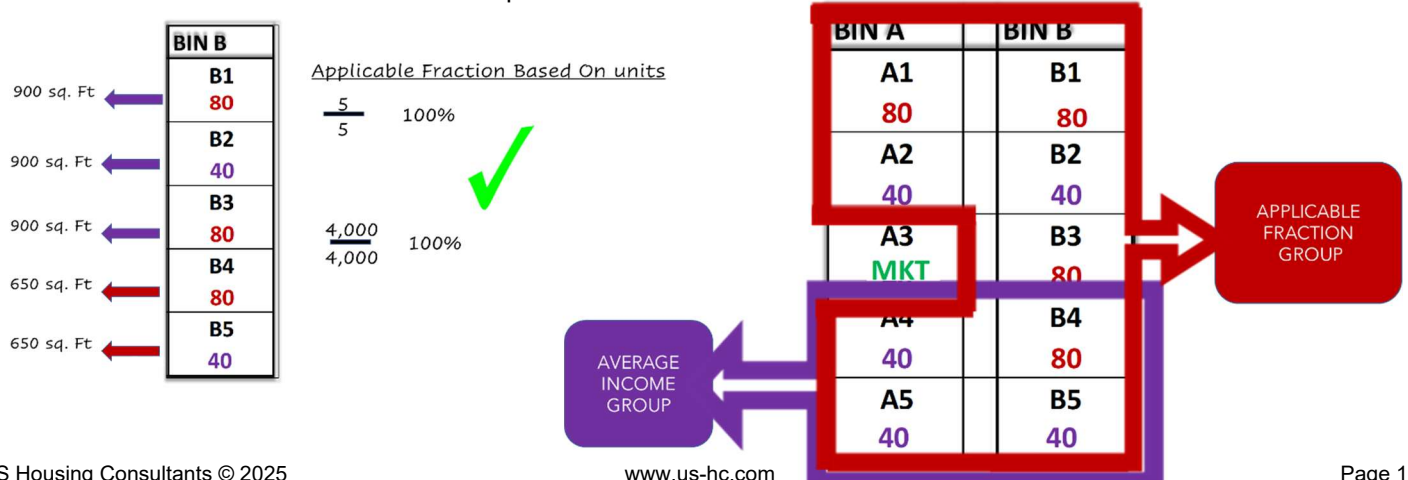
YEAR 2

Scenario: In Year 2 the household residing in unit A3 requests a transfer to unit # A5. The units swap status. A5 becomes a 40% unit and A3 becomes a market-rate unit. It should be noted that this transfer does decrease the Applicable Fraction for the BIN, which will reduce the owner’s annual credit.



YEAR 3

Scenario: In Year 3 the household residing in unit B1 (a 40% unit requests a transfer to unit # B5 (a 80% unit) as a reasonable accommodation. The units swap status. B1 becomes a 80% unit and B5 becomes a 40% unit.



CONQUERING LIHTC COMPLIANCE: The Not So "Average Income" Set-Aside

REFERENCES & NOTES

6. Correcting Non-compliance

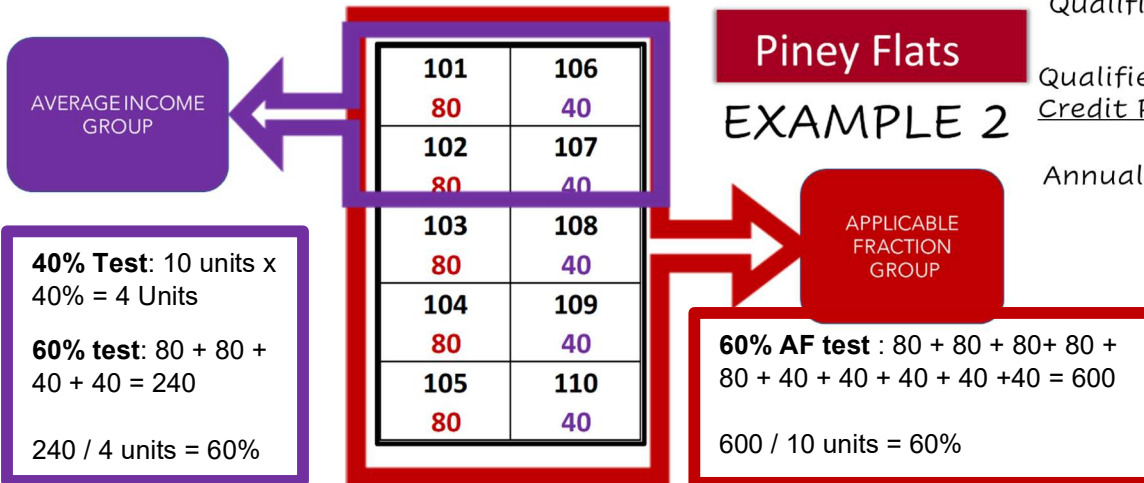
Removal of Mitigation Actions and Timeframe to Address Noncompliance

The final regulation removed the mitigating actions that stipulated that any issues of non-compliance impacting the AIT could only be remedied, if the issue of non-compliance was corrected and the AIT restored within 60 days of the close of the taxable year.

As the final regulation now allows for unit designations to float, successfully addressing non-compliance issues are much more feasible.

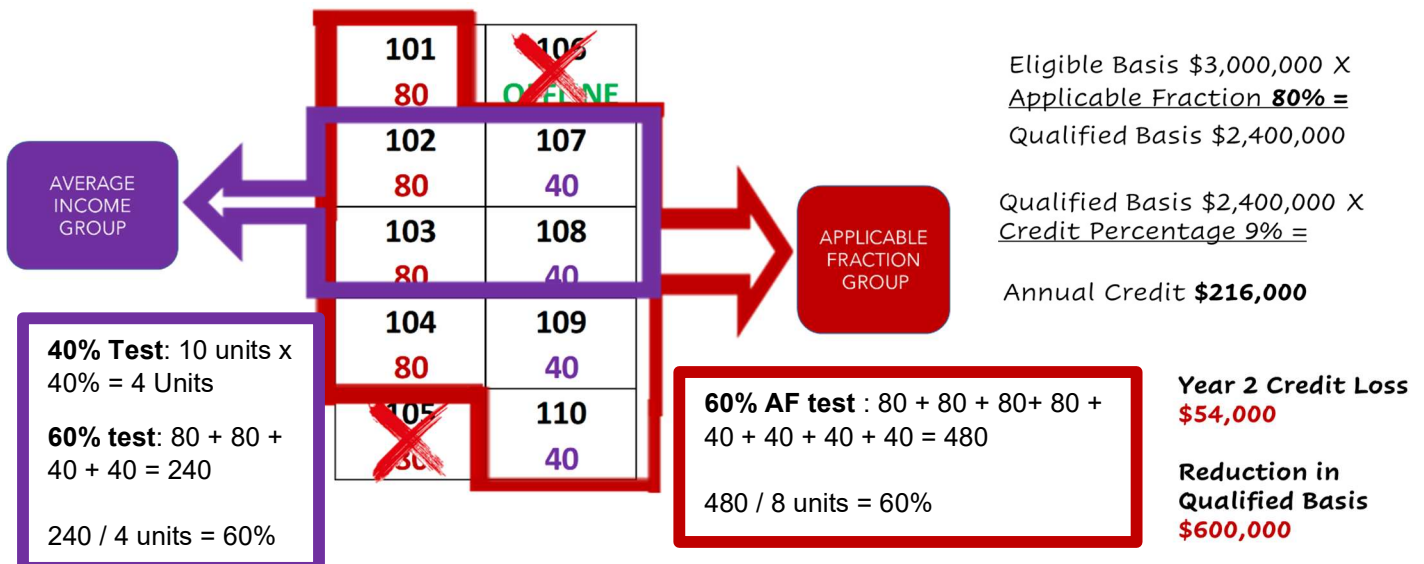
10 Unit, Single BIN Project –
All units are the same size

YEAR 1



YEAR 2

Scenario 1: In Year 2, Unit 106 is destroyed by fire and is not restored to habitable condition by the end of the year. Excluding 106 from the Applicable Fraction Group results in a average income in excess of 60%. In order to get the average below 60%, Unit 105 is also excluded from the Applicable Fraction Group. Excluding these two units from the Applicable Fraction Group reduces the applicable fraction from 100% to 80% which reduces the annual credit for year 2. Further, since unit 106 was a part of the AI Group, a new AI group of units has to be identified.



CONQUERING LIHTC COMPLIANCE: The Not So "Average Income" Set-Aside

REFERENCES & NOTES

6. Correcting Non-compliance, cont.

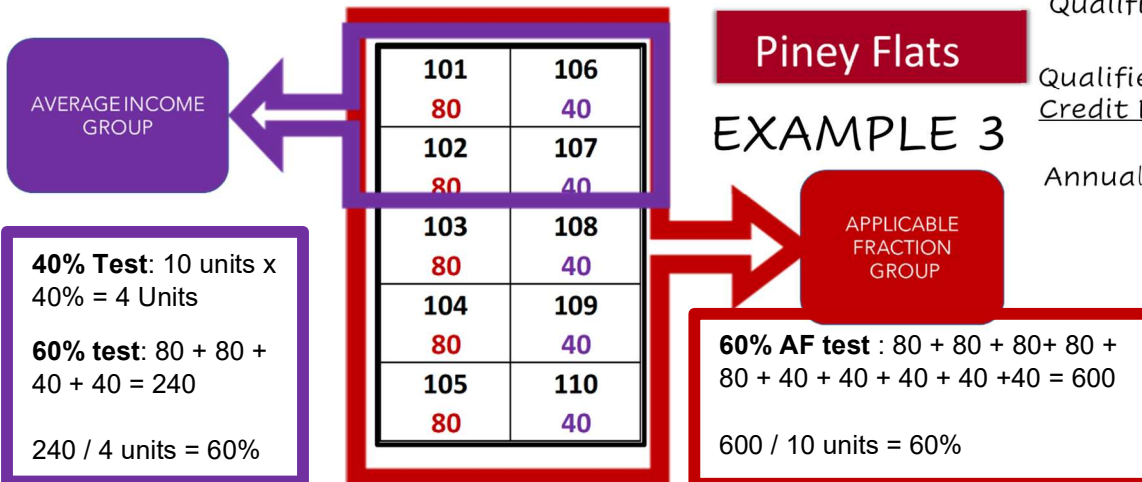
10 Unit, Single BIN Project –
All units are the same size

YEAR 1

Eligible Basis \$3,000,000 X
Applicable Fraction **100%** =
Qualified Basis \$3,000,000

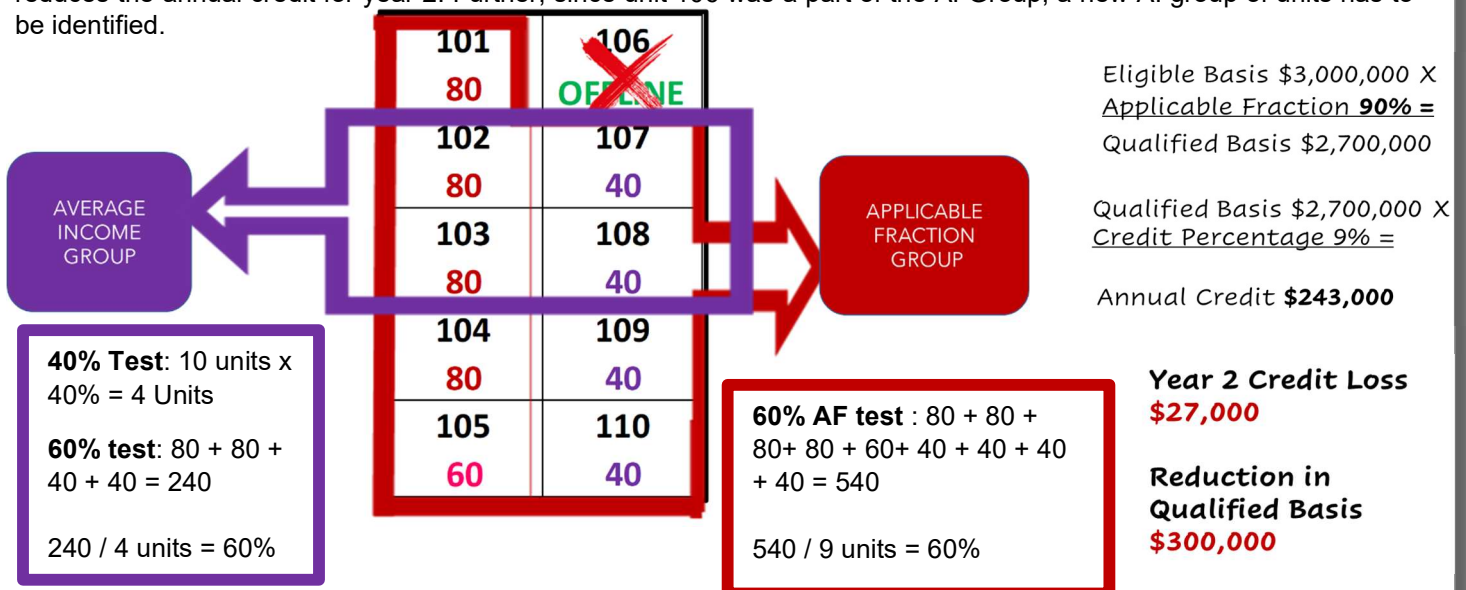
Qualified Basis \$3,000,000 X
Credit Percentage 9% =

Annual Credit **\$270,000**



YEAR 2

Scenario 1: In Year 2, Unit 106 is destroyed by fire and is not restored to habitable condition by the end of the year. Excluding 106 from the Applicable Fraction Group results in an average income in excess of 60%. It is determined that the household residing in unit 105 has a household income at or below 60%. The owner redesignates unit 105 from 80% to 60% and excludes Unit 106 Applicable Fraction Group. This reduces the applicable fraction from 100% to 90% which reduces the annual credit for year 2. Further, since unit 106 was a part of the AI Group, a new AI group of units has to be identified.



CONQUERING LIHTC COMPLIANCE: The Not So “Average Income” Set-Aside

REFERENCES & NOTES

7. Next Available Unit Rule

For the purpose of applying the Next Available Unit Rule (NAUR), a household is deemed to be over-income if the household's income exceeds the higher of 140% of the 60% income limit or over 140% of the limit that applies to the unit (70% or 80%).

The proposed 2020 regulation's application of the NAUR, was based on the prohibition on changing unit designations and the mitigating actions. Since the requirement that prohibited the changing of unit designations was amended, and as the section on Mitigating Actions was removed, the NAUR was amended in 1.42-15 to reflect these changes.

The NAUR was amended to require that the next available market rent unit being used to satisfy the NAUR, be rented and re-designated to an income limit designation that will maintain compliance with the AIT, instead of the income limit level that was designated to the over-income unit that initially triggered the application of the Next Available Unit Rule.

The final regulation carries over the provision that the NAUR does not have to be followed in any specific order when multiple low-income units are determined to be over-income, but that the order used could impact the “group of qualified units” used for the applicable fraction.

Vacant LIHTC units will not be affected by the NAUR, as they will continue to be rented to households based on the unit's designated income limit level.

Example 1 – Average Income MSA & The Next Available Unit Rule

1-Person Income Limits

20%	30%	40%	50%	60%	70%	80%
\$10,000	\$15,000	\$20,000	\$25,000	\$30,000	\$35,000	\$40,000

A one-person household is currently occupying a 600 sq. ft. one-bedroom unit restricted to 50%. At recertification on 11/01/2022, the household's income of \$44,000 exceeds 140% of the 60% limit (\$42,000).

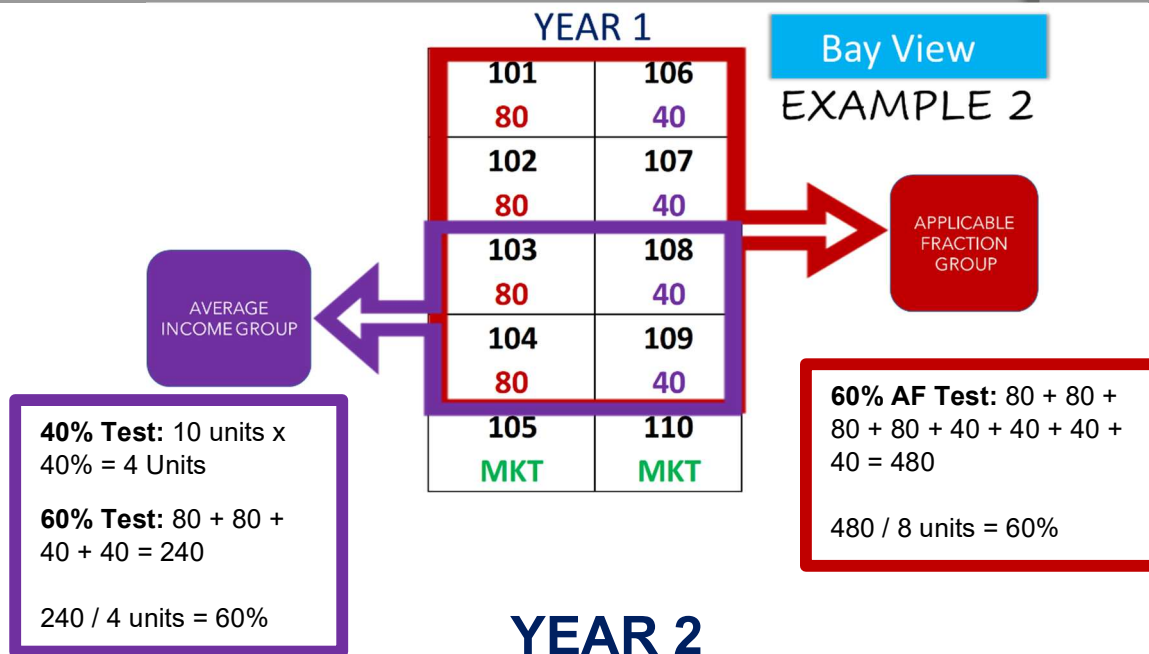
- On 11/15/2022, Unit #101, a 600 sq. ft. one-bedroom, 80% LIHTC unit previously occupied by an eligible household, becomes vacant.
- On 11/20/2022, Unit #505, a 600 sq. ft. one-bedroom market-rate unit, becomes vacant.

In the above scenario, management should rent Unit #101 to a household that meets the 80% income limit restriction (or an income level that maintains compliance with AIT), and Unit #505 should be rented to a household with an annual income at or below the 50% limit (or an income level that maintains compliance with AIT.)

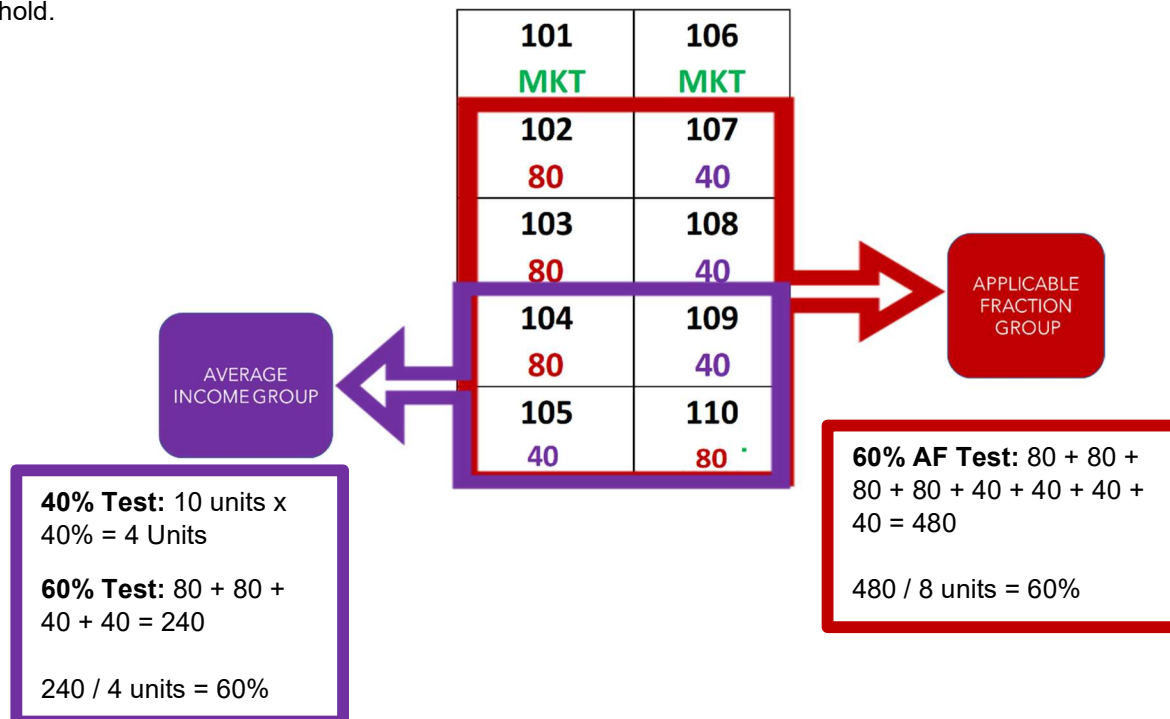
CONQUERING LIHTC COMPLIANCE: The Not So "Average Income" Set-Aside

REFERENCES & NOTES

7. Next Available Unit Rule, cont.



Scenario 1: In July of Year 2, Unit 101 and 106 are over-income. In August - Unit 105 Vacated and redesignated to 40% and rent to a qualified Household. In October - Unit 110 Vacated and redesignated to 80% and rent to a qualified Household.



CONQUERING LIHTC COMPLIANCE: The Not So “Average Income” Set-Aside

REFERENCES & NOTES

8. Record Keeping

Temporary regulations were introduced to address procedural requirements regarding the identification of qualified unit groups for purposes of the AI test and the Applicable Fraction.

The temporary regulations require that unit designations be communicated to the Housing Finance Agency (HFA) on an annual basis. Further, the taxpayer must inform the HFA on an annual basis of the identified units to be used for the AIT Group and the units to be used for the Applicable Fraction Group. When and how this information is reported to the HFA is to be determined by the HFA.



Amanda Lee Gross

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Ms. Gross has over 22 years of hard-won, real-world knowledge and experience in all aspects of the affordable housing industry.

She began her career as a site manager, eventually rising to the position of compliance director for a large multi-state property management company.

Ms. Gross leveraged her experience to become a highly skilled, nationally recognized trainer in Fair Housing, LIHTC, Rural Development, HUD, and HOME.

Over the last 12 years, she has conducted hundreds of trainings nationwide and has provided consulting services to state housing finance agencies, public housing authorities, management companies, and developers.

Ms. Gross is a featured speaker at numerous industry housing events. She also provides custom-tailored training to private organizations that understand that highly-trained staff are more effective and better able to protect the assets and reputation of the company. She also works in the consulting capacity, advising clients in the development of their policies and procedures, optimizing project compliance performance, and addressing audit findings.

"I have had the great pleasure of leading a couple of classes with Amanda Gross – trainer extraordinaire at US Housing Consultants. I feel like I'm the "old guard" watching over the "rising star". Amanda's classes are full of necessary information, and she has a knack for delivering compliance content in such a way that you will never be bored. If you get a chance, be sure to join her for a LIHTC or HUD training."

--- Mary Ross, President, Ross Business Development, Inc.

Ms. Gross's areas of expertise focus on the following programs:

- Fair Housing & Violence Against Women Act (VAWA)
- Low-Income Housing Tax Credit (LIHTC) Program
- USDA Rural Development Rental Housing Program
- HUD Multifamily Housing Programs
- HOME Investment Partnerships Program
- Tax-Exempt Bond Compliance



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Gary Kirkman

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Gary Kirkman brings over 20 years of leadership experience in the affordable housing industry and currently serves as the Director of Compliance Training at US Housing Consultants.

Gary began his career as a Regional Property Manager, overseeing Rural Development and HUD properties. His passion for supporting communities and mentoring others led to his promotion to Training Specialist, where he managed multiple affordable housing communities while providing hands-on training to staff on program requirements.

He later advanced to the role of Training Director, where he played a key role in developing company policies and procedures and leading the organization's training initiatives. During this time, Gary also partnered with property owners and developers to present at town council meetings, advocating for the development of affordable housing in areas where it was most needed.

Earlier in his career, Gary was recognized as an award-winning Community Manager, receiving the Best Overall Compliance in Affordable Housing award for the Southeast Region within a property management company portfolio.

Known for his engaging and relatable style, Gary is a seasoned public speaker who regularly conducts both public and private trainings. He is a frequent presenter at industry conferences, where he provides expert guidance on all major affordable housing programs.

Gary is highly respected by colleagues and industry professionals alike, with many praising his deep knowledge, approachable demeanor, and dedication to helping others succeed. Colleagues have stated, *"He has the ability to learn complex compliance requirements and teach them in a manner that others can learn"* and *"Because of his positive disposition, his reflective way of operating, and all of the character traits that make him so special, Gary's questions never go unanswered, and his searches always bring him to exciting new discoveries."*

Gary's areas of expertise focus on the following programs:

- Low-Income Housing Tax Credit (LIHTC) Program
- HUD Multifamily Housing Programs
- USDA RD Rental Housing Program
- HOME Investment Partnerships Program
- Fair Housing and Accessibility
- Violence Against Women Act (VAWA)
- Project and Asset Management
- Customer Service & Marketing



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Randy McCall

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Mr. Randy McCall brings over twenty years of affordable housing experience. His passion and in-depth knowledge of affordable housing programs has enabled him to successfully provide training to management companies, city/state/federal agencies, and non-profit entities.

Mr. McCall's career began as an on-site leasing agent and then progressed to other on-site positions including Assistant Manager, Assistant Maintenance Supervisor, Bond Compliance Manager, Social Activities Manager, and Senior Community Manager.

His experience also includes work as a Compliance Specialist, Physical Inspector, and Regional Compliance Auditor. His experience led him to a State Housing Finance Agency where he worked as a Training Specialist and was promoted to Supervisor of Rental Compliance in the Asset Management Department.

Throughout his career he has also utilized his experience and skills to create training materials for inexperienced and seasoned learners. He has also been featured on panels at industry conferences.

Mr. McCall's areas of expertise focus on the following programs:

- Low-Income Housing Tax Credit (LIHTC) Program
- HUD Multifamily Housing Programs
- USDA RD Rental Housing Program
- HOME Investment Partnerships Program
- Fair Housing and Accessibility
- Violence Against Women Act (VAWA)
- Project and Asset Management
- Customer Service & Marketing
- Underwriting and Funding Application



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Morgan Baldwin

Housing Compliance Trainer

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Morgan Baldwin brings years of experience in the affordable housing industry to her role as a Housing Compliance Trainer at US Housing Consultants.

She began her career as a Compliance Specialist, focusing on detailed monitoring and auditing of various multifamily housing programs throughout Florida.

Morgan's path into affordable housing was anything but conventional. Originally pursuing a career in dentistry, she entered the industry with no prior experience — a journey that reflects her curiosity, resilience, and commitment to purposeful work.

Today, Morgan delivers training nationwide on the complexities of programs such as:

- Low-Income Housing Tax Credit (LIHTC)
- HOME Investment Partnerships Program
- Community Development Block Grant Disaster Recover (CDBG-DR)
- National Housing Trust Fund (NHTF)
- HUD Multifamily Housing Programs.

Morgan's expertise is supported by a Bachelor of Applied Science (BAS) degree and the respected Housing Credit Certified Professional (HCCP) certification from the National Association of Home Builders.

Recognized for her ability to make compliance approachable and relatable, Morgan empowers others to confidently navigate the complexities of regulatory requirements with clarity and assurance.

Morgan's mission is clear: to inspire and educate the next generation of housing professionals, ensuring affordable housing remains accessible, equitable, and sustainable for all.



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Contact Us For More Information

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