

IRS Guidance on Average Income AMI Calculations

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On Jan. 30, the Internal Revenue Service (IRS) released [Revenue Ruling 2020-4](#) addressing the [average income](#) (AI) minimum set-aside. The ruling resolves [what had been an uncertainty](#): how to set limits for the 20, 30, 40, 70 and 80% designations.

Calculation Method

As was widely anticipated by Low-Income Housing Tax Credit (LIHTC) professionals, the approach will be the same as applies to 60 % area median income (AMI) limits.

The U.S. Department of Housing and Urban Development (HUD) annually publishes two sets of limits:

1. Section 8, for HUD's assisted housing programs, and
2. [Multifamily tax subsidy projects](#) (MTSP) income limits for LIHTC qualification levels and maximum housing expenses.

Following federal law and [past IRS guidance](#), the MTSP starts with HUD's Section 8 "very low income" (VLI) figure of 50% AMI and sets the 60% limits as households with incomes at 120% of VLI.

Rev. Rul. 20-04 says, "Congress did not indicate that a different HUD income level calculation category should be used." Therefore, the IRS simply expands the current practice:

- 20% AMI is 40% of VLI
- 30% AMI is 60% of VLI
- 40% AMI is 80% of VLI
- 70% AMI is 140% of VLI
- 80% AMI is 160% of VLI

Other HUD Limits

A possibility for confusion stems from HUD's other non-MTSP limits, "low income" (LI) and "extremely low income" (ELI), which apply to various appropriations programs (e.g., Housing Trust Fund). A common mistake is thinking these two amounts are the same as 80 % and 30 % of

AMI, respectively. In fact, federal law requires HUD to make multiple adjustments to each. As a result, ELI exceeds 30% in many jurisdictions. (LI is varied.)

The IRS is aware of these adjustments; the ruling describes them as “irrelevant” to what matters for LIHTC limits.

Novogradac Rent & Income Limit Calculator[®]

Soon after [AI became law](#), Novogradac made the limits available in its free, online calculator. The images below show income limits for the Raleigh, N.C., metropolitan statistical area (Wake County):

Raleigh, NC Metro (Wake County) Income Limits

LIHTC Income Limits for 2019 (Based on 2019 MTSP Income Limits)							
Household Size	60.00%	20.00%	30.00%	40.00%	50.00%	70.00%	80.00%
1 Person	38,940	12,980	19,470	25,960	32,450	45,430	51,920
2 Person	44,520	14,840	22,260	29,680	37,100	51,940	59,360
3 Person	50,100	16,700	25,050	33,400	41,750	58,450	66,800
4 Person	55,620	18,540	27,810	37,080	46,350	64,890	74,160
5 Person	60,120	20,040	30,060	40,080	50,100	70,140	80,160

Source: Novogradac



Raleigh, NC Metro (Wake County) Rent Limits

LIHTC Rent Limits for 2019 (Based on 2019 MTSP/VI Income Limits)							
Bedrooms (People)	60.00%	20.00%	30.00%	40.00%	50.00%	70.00%	80.00%
1 Bedroom (1.5)	1,043	347	521	695	869	1,217	1,391
2 Bedrooms (3.0)	1,252	417	626	835	1,043	1,461	1,670
3 Bedrooms (4.5)	1,446	482	723	964	1,205	1,687	1,929

Source: Novogradac



Protection for Existing Properties

An important reality is [AI buildings have placed in service](#) before the guidance came out. Although LIHTC professionals generally knew what the IRS would adopt (as noted above), there is a possibility some properties are using what are now the wrong amounts. For instance, either HUD’s LI or ELI limits instead of 80% or 30%. For example, in an area where ELI is greater than 30%, a property manager may have moved in a tenant to a 30% designated unit that will not meet the 30% limit based on the guidance in Rev. Rul. 20-04. Under normal circumstances, a

tenant's income being greater than the applicable limit at move-in results in noncompliance, which is particularly problematic during lease-up.

Fortunately, Rev. Rul. 20-04 allows such units to continue to count as qualified, under certain conditions. Specifically, the developer must have "unambiguously" indicated in the "request for an allocation" (i.e., application) both

- an intent to elect AI, and
- a reasonable expectation for "a specific dollar amount" greater than the "designated imputed income limitation" determined under the ruling.

Meeting the criteria above means the limits for the duration of the compliance period for such units are "not less than" the reasonably expected amount indicated in the allocation request to the agency. For example, if ELI was \$30,000 at the time of application and the calculated limit is \$25,000, the property would continue to use \$30,000 for both qualifying tenants and setting the maximum housing expense. However, the property would not be eligible to implement any future increases in ELI but rather would use \$30,000 until the calculated limit exceeded this amount, and then would use the calculated amount going forward.

Based on the example below, the property would use \$30,000 until 2024, when the calculated amount exceeds the safe-harbor amount:

Year	ELI	30 Percent Limit*	Applicable Limit
2019	30,000	25,000	30,000
2020	30,600	26,000	30,000
2021	31,200	27,050	30,000
2022	31,800	28,150	30,000
2023	32,450	29,300	30,000
2024	33,100	30,450	30,450
2025	33,750	31,650	31,650

*Calculated by taking VLI times 60 percent

Source: Novogradac



This allowance is available only to properties with an allocation before the ruling's publication date. The IRS does not say whether use of LI or ELI instead of 80 % or 30 % is reasonable, thereby potentially creating another uncertainty. In addition, it is likely that applications submitted prior to March 23, 2018, or before the agency updated its application for the AI minimum set-aside, would not be eligible for this safe harbor, because the developer would not have been able to indicate an intention.

No doubt there are very few (if any) properties operating under the wrong limits. In those circumstances, owners should carefully analyze eligibility to maintain the higher amounts and

contact the LIHTC allocating agency. Transitioning the units into following the correct maximums may make sense if financially feasible.

Going Forward

Although Rev. Rul. 20-04 very helpfully [resolves a crucial matter](#), there are others not addressed. Examples include [what it means to “designate”](#) a unit and operation of the next available unit rule. Whether the IRS will [issue any further guidance](#) is unknown.

To learn more about the AI minimum set-aside, order the recording of Novogradac’s [recent webinar](#) and register to attend the new [pre-conference workshop](#) on April 29 in San Francisco.

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