



Average Income Test: The Two Qualified Groups of Units

by Matt Rayburn, Indiana Housing and Community Development Authority

Under the Average Income Test, the owner must designate two qualified groups of units: one to satisfy the minimum set-aside test and one to determine the applicable fraction. These requirements are defined in the final and temporary Average Income Test regulations (Treasury Regulations 1.42-19 and 1.42-19T).

Qualified Group of Units to Satisfy the Minimum Set-Aside

A project (as defined by the election on Form 8609 Line 8b) with an Average Income minimum set-aside election meets the minimum set-aside test if at least 40% of the total units in the project constitute a qualified group of units. To be considered a qualified group of units, two tests must be met.

1. Each unit in the group must be a qualified “low-income unit” — i.e., must be occupied by an eligible household, properly rent-restricted, suitable for occupancy, and otherwise compliant with Section 42; and
2. The average of the imputed income limitations of all the units in the group must not exceed 60% AMI. Possible imputed income and rent limit designations under the Average Income Test are 20%, 30%, 40%, 50%, 60%, 70% or 80% of Area Median Income (AMI). Other designations are not allowed. A project is not required to have units designated at each of these imputed income levels, as long as the average imputed income limitation for the qualified group is at or below 60% AMI.

The owner must designate units at the various imputed income limits in such a manner that the unit mix will result in a qualified group of units that meets the minimum set-aside test. The average is calculated based on the imputed income designation of the unit, not on the actual income of the household residing in the unit — e.g., what matters is that Unit 101 is designated as 60% AMI, not that the household’s actual income is at 55% AMI.

Qualified Group of Units to Determine the Applicable Fraction

All units to be counted toward the applicable fraction of any building in the project are collectively included in a qualified group of units for purposes of determining the applicable fraction. This qualified group of units must meet the same two tests as the qualified group of units for satisfying the minimum set-aside: The group must contain only low-income units, and



the average of the imputed income limitations of all the units in the group must not exceed 60% AMI.

Applicable fraction is then calculated on a building-by-building basis. The applicable fraction for a particular building is computed using only those units that are in (1) that building and (2) the qualified group of units to determine the applicable fraction.

The unit designations within an individual building are not required to meet a 60% or below average imputed income limitation. The average must be met within the entire qualified group of units, not on a building basis.

Identifying Qualified Groups of Units

For each taxable year, the owner must identify which units are included in each of these two qualified groups of units. Once the qualified groups have been identified, the owner must meet both a recording requirement and a communicating requirement.

Identification of each qualified group of units must be recorded in the owner's "books and records" and retained for a period of time that complies with the record retention provision of Treasury Regulation 1.42-5(b)(2). The regulations do not define "books and records." Owner agents will need to establish their own system of identifying and recording their qualified groups of units, ensuring that their records meet any expectations of their housing credit agency and investor.

Identification of each qualified group of units must also be communicated annually to the applicable state housing credit agency. The temporary regulations grant "agency flexibility" by stating that the agency "may establish the time and manner in which information is annually provided to it." Housing credit agencies need to establish a written policy on the timing and manner of submitting this annual communication so that owner agents understand the agency's requirements.

Because owners are already required to submit an Annual Owner Certification per the monitoring requirements of Treasury Regulation 1.42-5, agencies may find efficiency and synergy in using the Annual Owner Certification process as the annual means of having the owner communicate their qualified groups of units. However, an agency may choose to implement other reporting requirements for this required communication.

For owner agents, it is critical to know the recording and communicating requirements of each housing credit agency with which you work. For housing credit agency staff, it is important to set a written policy on this matter.



Matt Rayburn is the deputy executive director and chief real estate development officer for the Indiana Housing and Community Development Authority, the housing credit agency for Indiana, and a member of the Technical Advisory Group for the HCCP Board of Governors. He can be reached via <mailto:mrayburn@ihcda.in.gov> or 317-233-9564.

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