

CAHEC

30 

YEARS

NC Average Income Requirements

Presented by

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NC Average Income Policy

- Income average for property cannot exceed 60%
- Income average for any one bedroom type cannot exceed 60%
- Market rate units are prohibited
- For projects with more than one building, Owners must select each building as part of a multiple building set-aside on line 8b in part II of IRS Form 8609

NC Average Income Policy

- No more than four (4) income bands:
20%, 30%, 40%, 50%, 60%, 70% or 80%
- Income and Rent designations must float to maintain compliance
- If a household income has increase above 140% of the current set-aside limit, the next available unit of comparable or smaller size must be rented to a household at the lower set-aside until the appropriate unit mix is restored.
- If household income decreases, it is acceptable to move the unit to the lower set-aside if a slot is available, but is not mandatory.

NC Average Income Policy

- Annual recertification of households to confirm appropriate unit set-aside (No exception is allowed for 100% low income projects using Average Income as the minimum set-aside)
- Monitoring review frequency will be increased to annual reviews (Files and physical inspection)
- Increased monitoring fees (\$300 additional per unit – includes all units qualified, unrestricted, and employee)
- Lower set-asides must follow the MTSP income limits published by HUD annually. Units exceeding these limits will be reported to the IRS.

NC Average Income Policy

As part of the annual review of the certification required under C(1), the Agency will test compliance with the Average Income requirements. If the average income designation of at least 40% of compliant units is at or below sixty percent (60%) Area Median Income (AMI), there will be no impact to the minimum set-aside. The grouping of compliant units is expected to shift to help achieve compliance. If the minimum number of compliant units falls below forty percent (40%), or if the average income designation of the most advantageous grouping of 40% of compliant units is above sixty percent (60%) Area Median Income (AMI), the entire project will fail to meet the required minimum set-aside and will be reported to the IRS. The unit designation is determined by the owner as reported on the most recent unit event in RCRS. Units out of compliance at year end, regardless of whether attributable to a low-income certification issue or a physical inspection issue, will not be included in the grouping to determine whether the Average Income is acceptable and meets program requirements. Further, individual units that are out of compliance will be reported to the IRS, even if the minimum set-aside is not affected. Any unit out of compliance will cause the applicable fraction to be less than the required 100%.

What does this really mean?

NC Average Income Policy

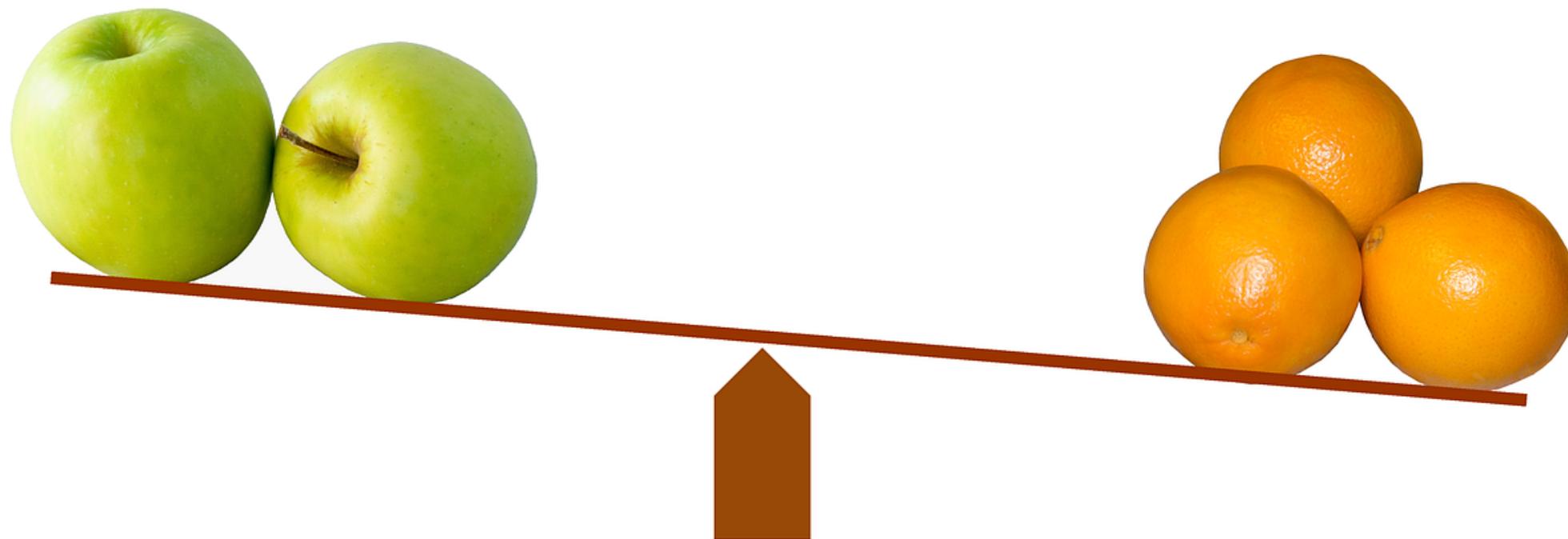
- The IRS requires the owner to “designate” the units they are using to meet the 40% rule.
- NC rule indicates that regardless of the units “designated” by the owner, NC is going to use units most favorable to the owner to avoid noncompliance.

NC Average Income Policy

Five (5) allowable reasons to change designation of unit:

- Federally permitted change
- Agency permitted or required change
(Required as income increases)
- Certain laws to enhance protections under certain laws.
 - Examples include:
 - The Americans with Disabilities Act
 - The Fair Housing Act
 - The Violence Against Women's Act
 - The Rehabilitation Act of 1973
- Tenant movement – units “swap” status
- Restoring compliance with average income requirements

Let's compare:



Average Income Requirements

IRS

- IRS allows all income bands in multiples of 10, from 20% - 80% area median income, or up to seven (7) income bands

NC

- NC only allows a maximum of four (4) income bands consisting of: 20%, 30%, 40%, 50%, 60%, 70%, or 80% area median income

Average Income Requirements

IRS

- The minimum number of units required to be low income is 40% of the total units
- Market rate units allowed
- The average income for all low income units cannot exceed 60%

NC

- NC requires 100% of the units to be low income
- Market rate units prohibited
- The average income for all low income units cannot exceed 60%

Average Income Requirements

IRS

- No requirements based on bedroom size
- No requirement related to multiple building election on line 8b of the 8609 (can be one project or multiple projects)

NC

- NC requires the average income of each bedroom size not to exceed 60% AMI
- NC requires that all buildings be part of a multiple building election on line 8b of the 8609 (must be one project)

Average Income Monitoring Requirements

IRS

- 20% of the units are required to be monitored every 3 years
- Annual recertifications required if less than 100% low income; otherwise annual recerts are not required

NC

- 10% of units are required to be monitored annually (30%)
- Annual recertifications required even though AI property is required to be 100% low income

Average Income Requirements

IRS

- 140% rule only applied to 60% AMI limit, regardless of unit set-aside designation, if 60% or less:
- 30% limit = \$14,160
- At recert, 140% limit = \$39,648 (60% limit of \$28,320 * 140%)

NC

- 140% rule only applied to every unit set-aside designation:
- 30% limit = \$14,160
- At recert, 140% limit = \$19,824 (\$14,160 * 140%)

Average Income Requirements

IRS

- Unit designations are floating
- If hh income at recert is over \$39,648, unit designation remains 30% AMI, but Next Available Unit Rule is invoked

NC

- Unit designations are floating
- If hh income at recert is over \$19,824, unit designation automatically goes up to next set-aside level and Next Available Unit Rule invoked

Two last NC considerations:

Individual Unit Designation Violation:

- If a single unit is found to exceed the unit designation, that unit is out of compliance and removed from the AI of the property until corrected.
- This unit will be reported to the IRS, even if this doesn't result in a loss of credits on all units.
- For example, a unit designated at 80% AMI is out of compliance due to being above the income limit at MI. This should reduce the AI overall when you exclude the unit because it is out of compliance. However, the unit will be reported as out of compliance, jeopardizing the credits on just that unit.

Two last NC considerations:

Lower Income & Rent Limits: Lower set-asides must follow the Multifamily Tax Subsidy Program (MTSP) income and rent limits as published by HUD annually.

- Property is not allowed to use the higher State-Mandated limits for lower set-aside units like properties with the 20/50 or 40/60 minimum set-aside can.
- Following the wrong income and rent limit chart can result in federal noncompliance.

Why is NC Different than IRS

- Good public policy
- Increased scrutiny by advocacy groups and legislature



Who decides which requirement to follow?



Better have a good compliance team!
Got plenty of bubble wrap?



