

Internal Revenue Code Section 42

(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) or (B)~~ 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. 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.

(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.

(III) 10-percent increments. The designated imputed income limitation of any unit under subclause (I) shall be 20 percent, 30 percent, 40 percent, 50 percent, 60 percent, 70 percent, or 80 percent of area median gross income.

(2) Rent-restricted units.

(C) Imputed income limitation applicable to unit. For purposes of this paragraph, the imputed income limitation applicable to a unit is the income limitation which would apply under paragraph (1) to individuals occupying the unit if the number of individuals occupying the unit were as follows:

(i) In the case of a unit which does not have a separate bedroom, 1 individual.

(ii) In the case of a unit which has 1 or more separate bedrooms, 1.5 individuals for each separate bedroom.

In the case of a project with respect to which a credit is allowable by reason of this section and for which financing is provided by a bond described in section 142(a)(7), the imputed income limitation shall apply in lieu of the otherwise applicable income limitation for purposes of applying section 142(d)(4)(B)(ii).

(D) Treatment of units occupied by individuals whose incomes rise above limit.

(i) In general. Except as provided in ~~clause (i)~~ clauses (ii), (iii), (iv) and (vi), notwithstanding an increase in the income of the occupants of a low-income unit above the income limitation applicable under paragraph (1), such unit shall continue to be treated as a low-income unit if the income of such occupants initially met such income limitation and such unit continues to be rent-restricted..

~~(ii) Rental of next available unit in case of 20-50 or 40-60 test. Next available unit must be rented to low income tenant if income rises above 140 percent of income limit. If~~ In the case of a project with respect to which the taxpayer elects the requirements of subparagraph (A) or (B) of paragraph (1), if the income of the occupants of the unit increases above 140 percent of the income limitation applicable under paragraph (1), clause (i) shall cease to apply to such unit if any residential rental unit in the building (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds such income limitation. In the case of a project described in section 142(d)(4)(B), the preceding sentence shall be applied by substituting “170 percent” for “140 percent” and by substituting “any low income unit in the building is occupied by a new resident whose income exceeds 40 percent of area median gross income” for “any residential unit in the building (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds such income limitation”.

~~(iii) Rental of next available unit in case of average income test. In the case of a project with respect to which the taxpayer elects the requirements of subparagraph (C) of paragraph (1), if the income of the occupants of the unit increases above 140 percent of the greater of—~~

~~(I) 60 percent of area median gross income, or~~

~~(II) the imputed income limitation designated with respect to the unit under paragraph (1)(C)(ii)(I),~~

~~clause (i) shall cease to apply to any such unit if any residential rental unit in the building (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds the limitation described in clause (v).~~

~~(iv) Deep rent skewed projects. In the case of a project described in section 142(d)(4)(B), clause (ii) or (iii), whichever is applicable, shall be applied by substituting “170 percent” for “140 percent”, and—~~

~~(I) in the case of clause (ii), by substituting “any low-income unit in the building is occupied by a new resident whose income exceeds 40 percent of area median gross income” for “any residential rental unit” and all that follows in such clause, and~~

~~(II) in the case of clause (iii), by substituting “any low-income unit in the building is occupied by a new resident whose income exceeds the lesser of 40 percent of area median gross income or the imputed income limitation designated with respect to such unit under paragraph (1)(C)(ii)(I)” for “any residential rental unit” and all that follows in such clause.~~

~~(v) Limitation described. For purposes of clause (iii), the limitation described in this clause with respect to any unit is—~~

~~(I) the imputed income limitation designated with respect to such unit under paragraph (1)(C)(ii)(I), in the case of a unit which was taken into account as a low-income unit prior to becoming vacant, and~~

~~(II) the imputed income limitation which would have to be designated with respect to such unit under such paragraph in order for the project to continue to meet the requirements of paragraph (1)(C)(ii)(II), in the case of any other unit.~~