

— UNDERSTANDING INCOME AVERAGING MINIMUM SET ASIDE

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CohnReznick LLP



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OVERVIEW

- New Minimum Set Aside
- Making the Election
- Basic Calculation
- Next Available Unit Rule
- Questions



NEW MINIMUM SET ASIDE

- Original minimum set asides:
 - At least 20% of units rent restricted and occupied by tenants at 50% or less of Area Median Income (AMI)
 - At least 40% of units rent restricted and occupied by tenants at 60% of AMI
 - NYC - special 25% of units at 60% of AMI
- **New Minimum Set Aside** - Consolidated Appropriations Act of 2018
- Can apply to elections made after enactment - March 23, 2018
- Owner designates income limitation for each low income unit
- Designation can be 20%, 30%, 40%, 50%, 60%, 70% or 80%
- Average of unit designations must be 60% or less of AMI
- Also at least 40% of units rent restricted



MAKING THE ELECTION

- Election made on Form 8609 filed with IRS
- New Form 8609 issued May 2018
- Election on Part II - line 10c
- Instructions to form revised in July 2018 - no new information
- States may require owner to follow election indicated at time of application



BASIC CALCULATION

- Many ways to get to 60% average
- 10 unit building - 4@80%, 3@60% 3@30% - Average 59% - ok
- 10 unit building - 5@80%, 5@40% - Average 60% - ok
- 10 units - 2 @80, 1@70, 2@60, 1@50, 2@40, 2@mkt - Ave. 60% -ok
- Rents charged to tenants based on unit income designation
- Calculation not based on units size or bedrooms - just number of units
- States may require mix of unit sizes - anti-abuse



NEXT AVAILABLE UNIT RULE

- Income of tenant increases above 140% of greater of:
 - 60% of AMI or
 - Designated income limitation
- Next vacant unit of equal or smaller size rented to:
 - Low income unit - rented at its designated income limit
 - Market rate unit - rented at level to keep the average at 60% or below
- Deep rent skew rules modified



QUESTIONS

- Can deals with pre-2018 allocations make this election?
- Can states have more restrictive rules?
- Does this impact tax exempt bond minimum set asides?
- Does this impact existing deals?
- Can deals with existing land use restrictions make this election?
- Planning Opportunities? Especially with Section 8
- What happens if a lower income unit is actually unqualified?



CONTACT US

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