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2021 Financial Management Conference

Technical Hot Topics – LIHTC Changes and Other Tax Issues

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Tom Schneider, Principal, DOZ

October 26, 2021

Questions

- All participant lines are muted.
- Please use the **Raise Hand** feature if you would like to speak.
 - Raise hand feature is located in the Participant panel.
- You may also use the **Chat** feature to ask questions.
- Send a **Chat** to the Host if you have a technical issue.

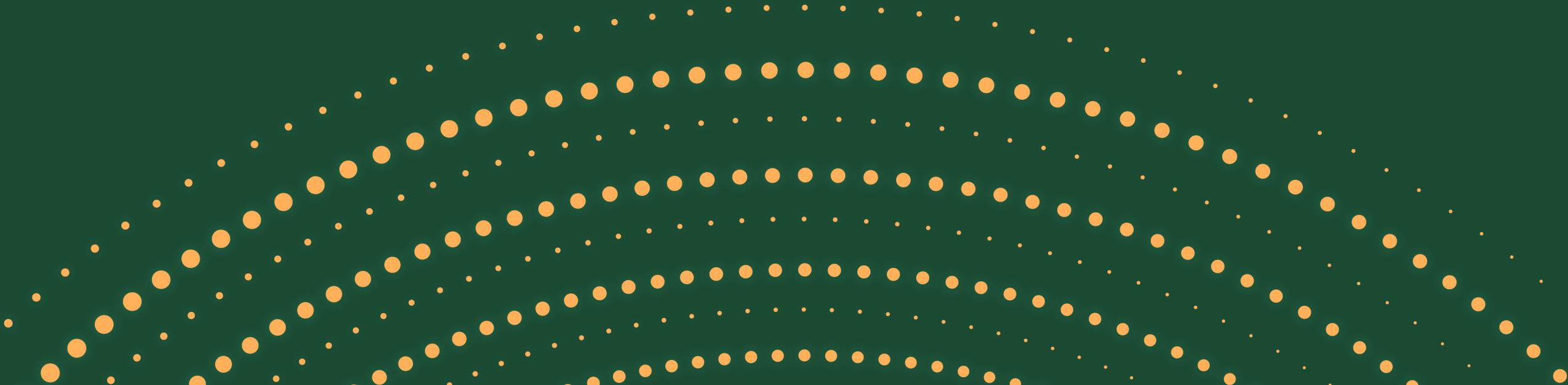
Continuing Professional Education Requirements for CPAs

- **Polls are Required for CPEs**
 - If you are seeking CPE credits, please submit ALL polls within each session, and the conference evaluations.
 - If you miss a poll, send a **Chat** message to the Host immediately.
- We use **Polls and the Zoom attendance record** to verify participation throughout the webinar.
 - **Participants must submit ALL polls and be logged in no later than 10 minutes after the scheduled session start time to receive a certificate.**

Continuing Professional Education Credits (CPEs) for CPAs

- **Check your Zoom display name**
 - If the correct name is not shown, email your Zoom display name and your full name to consult.lwells@gmail.com.
- You may **request a certificate of completion via the conference evaluations.**
 - Links to the evaluations are emailed to all registrants.
- For more information on CPE credits, contact Lindsay Wells at consult.lwells@gmail.com.

Average Income

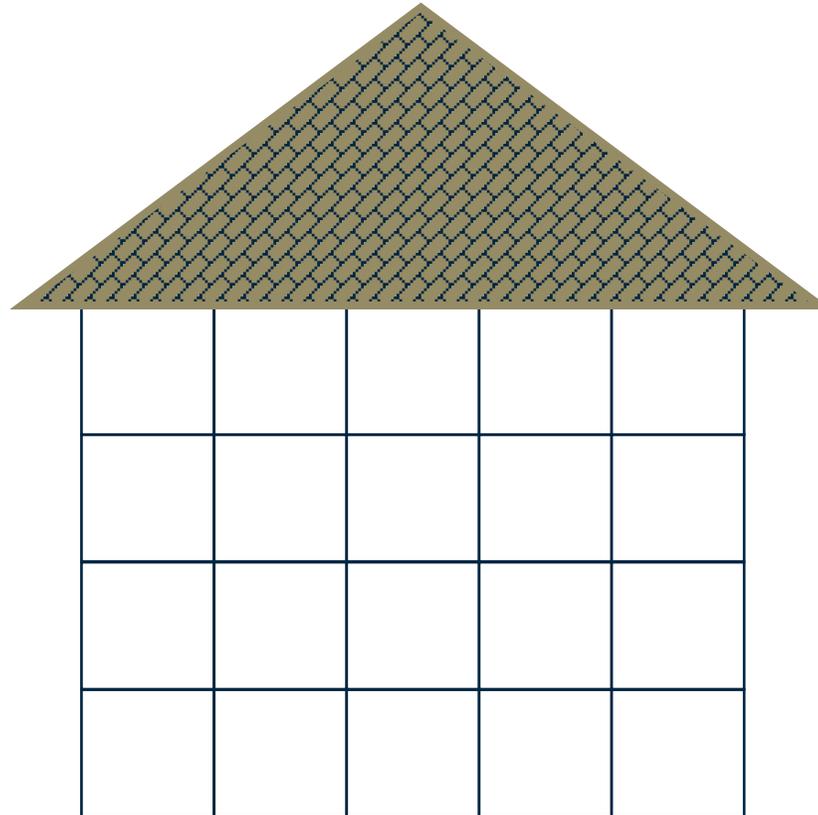
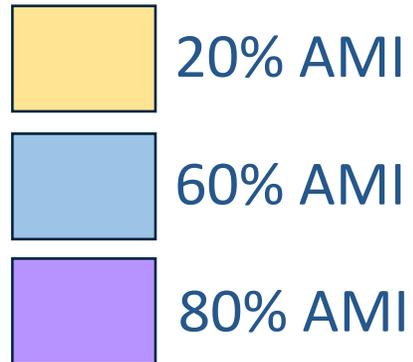


Proposed Regulations

- Published to the Federal Register on 11/13
- Issues with the proposed regulations:
 1. Timing of designations
 2. Cliff problem
 3. Mitigating factors

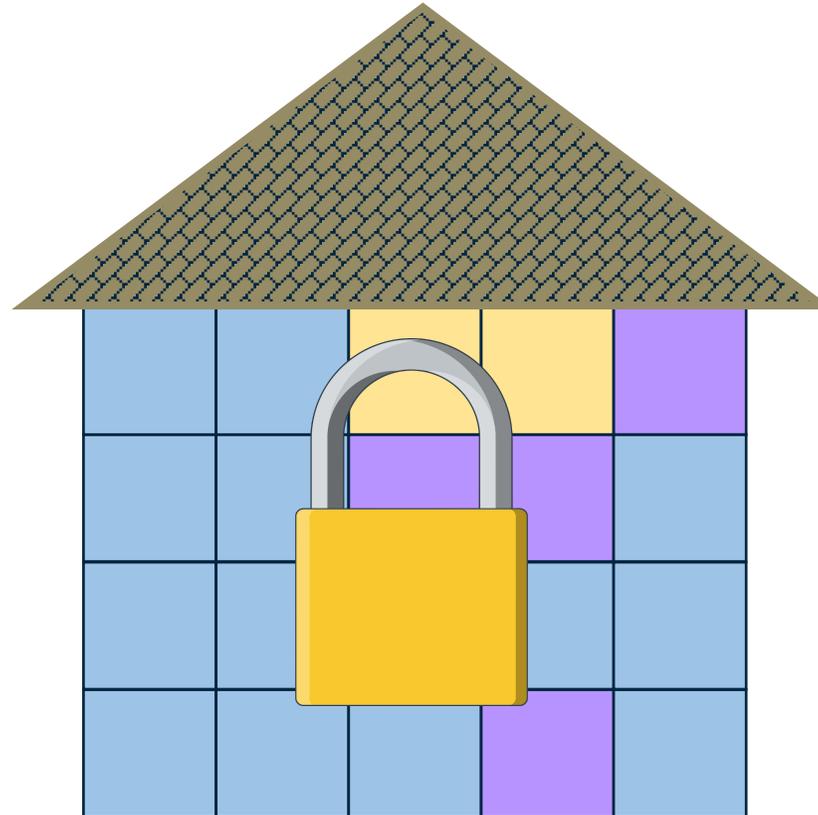
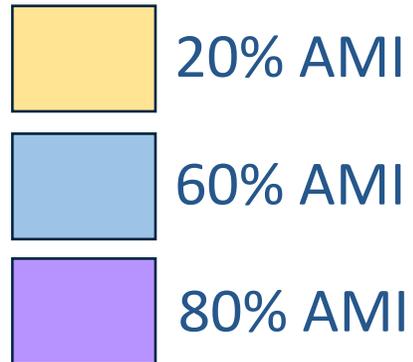
Proposed regulations

Timing of designations



Proposed regulations

Timing of designations

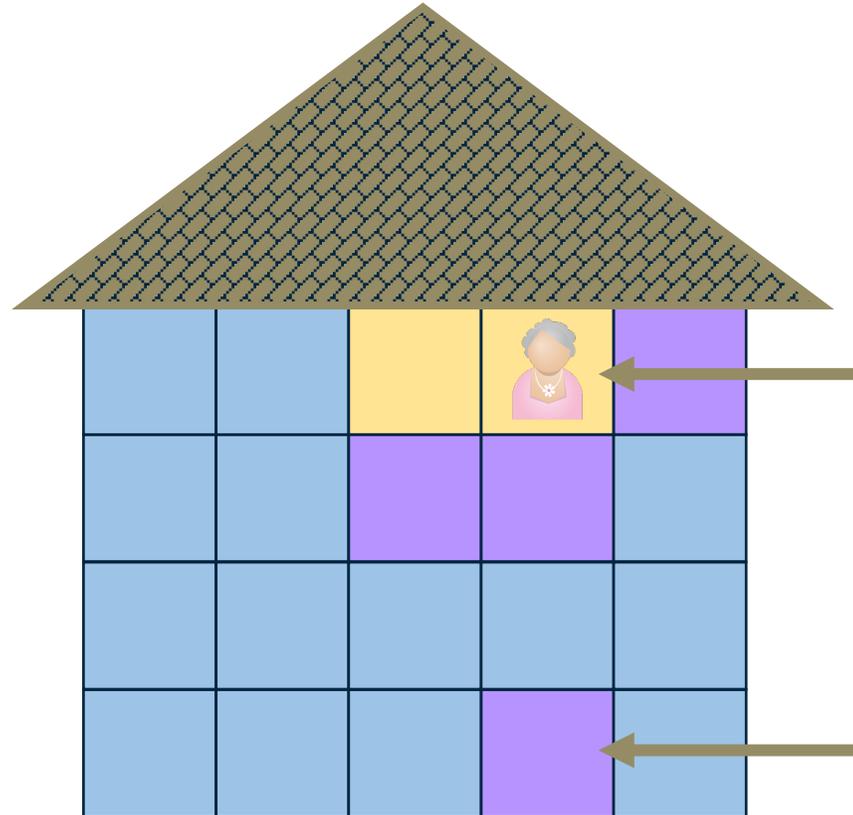
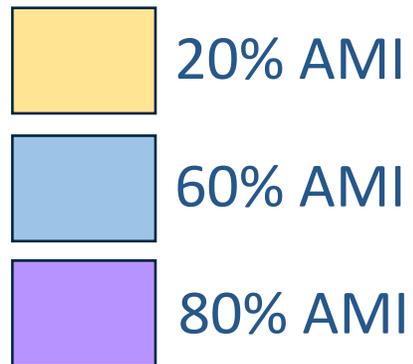


✓ LIHTC units:
20/20 = 100%

Project average:
60%

Proposed regulations

Timing of designations



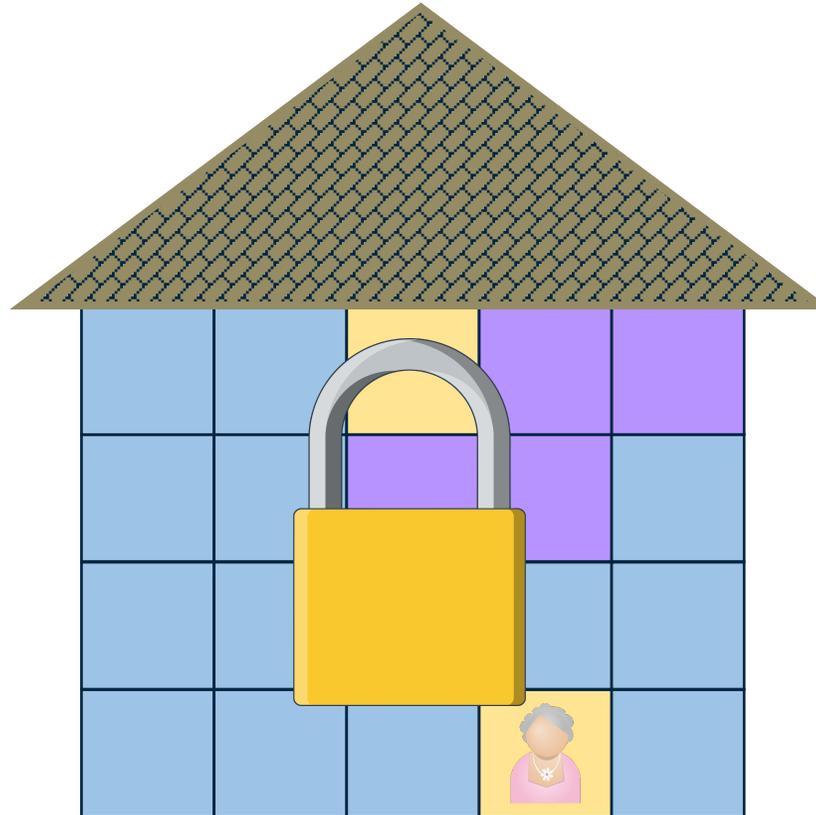
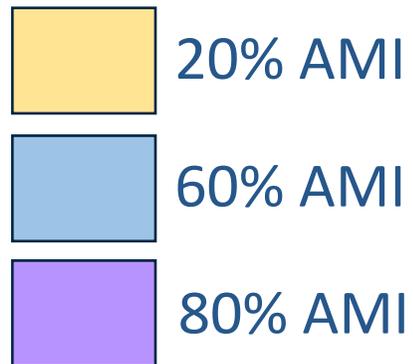
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Proposed regulations

Timing of designations

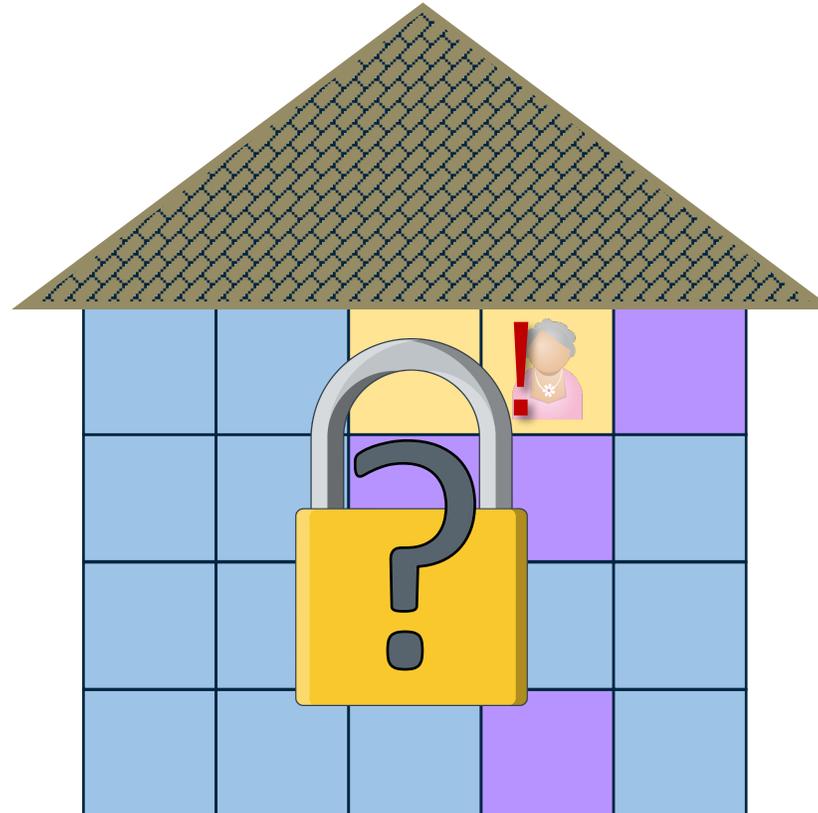
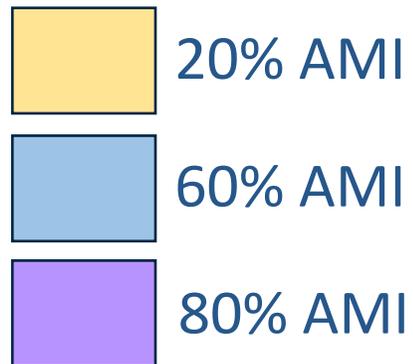


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Timing of designations

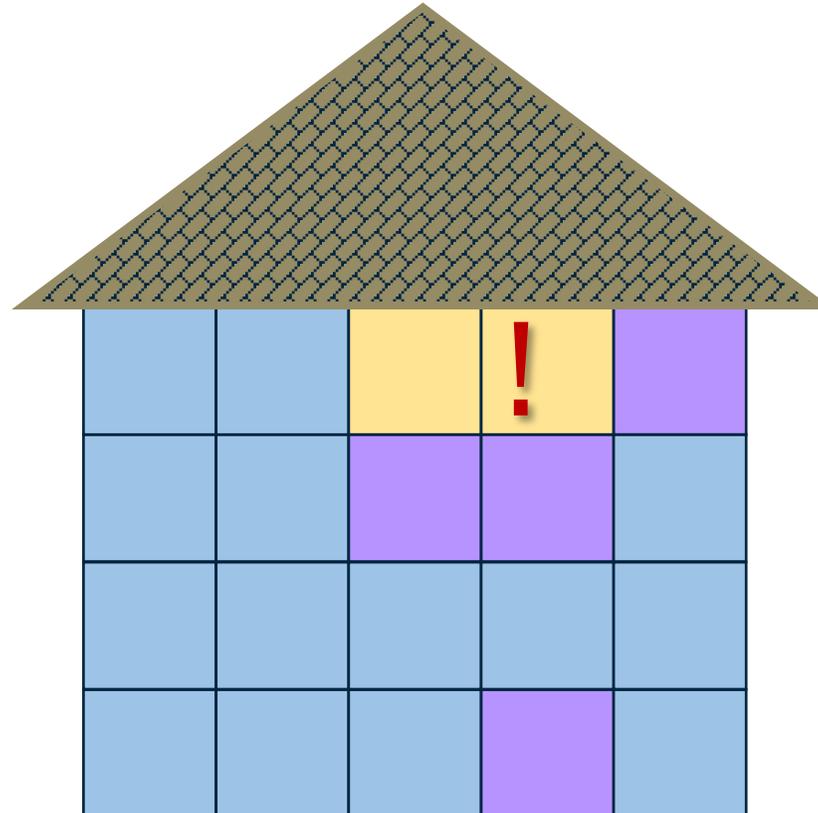
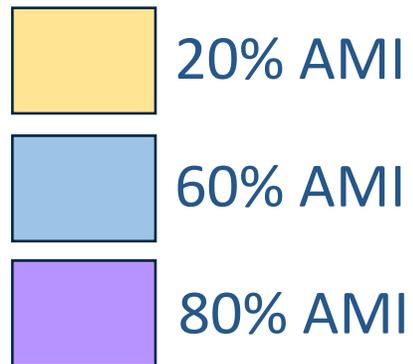


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20/20 = 100%

Project average:
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Proposed regulations

Cliff problem



✓ LIHTC units:
20/20 = 100%

Project average:
60%

Proposed Regulations

§42(g)(1)(C)(i)

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.

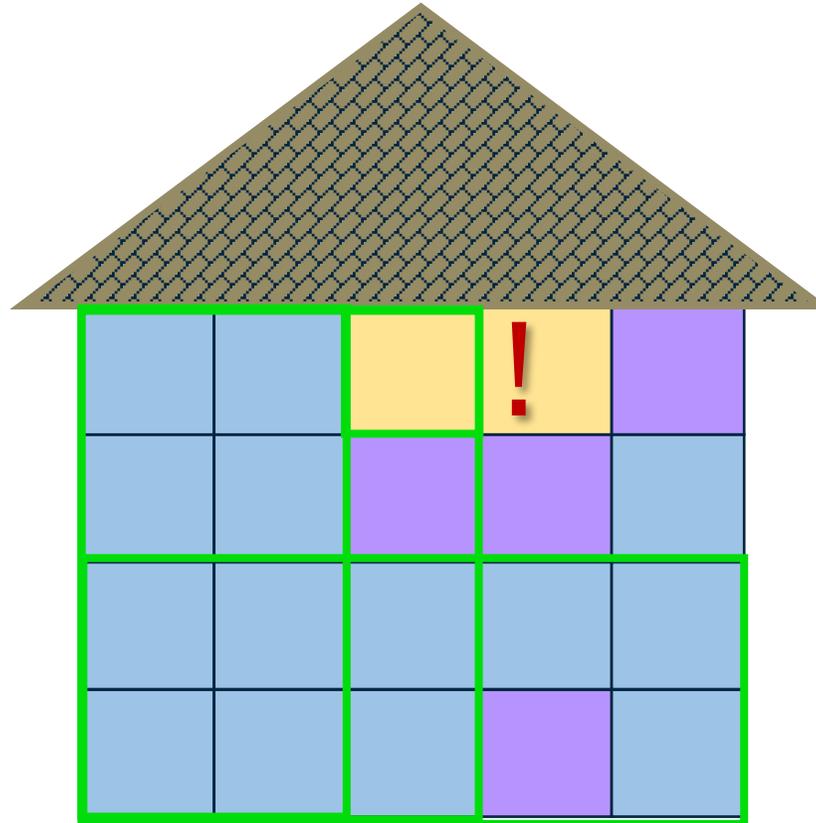
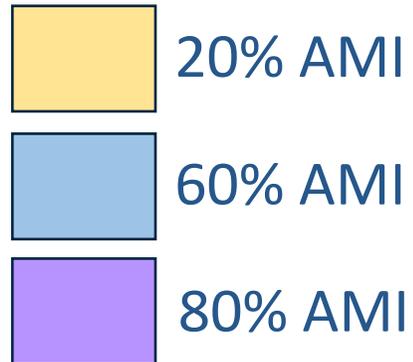
Proposed Regulations

§42(g)(1)(C)(i)

*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.*

Proposed regulations

Cliff problem



Applicable fraction:
 $20/20 = \text{~~100\%~~}$

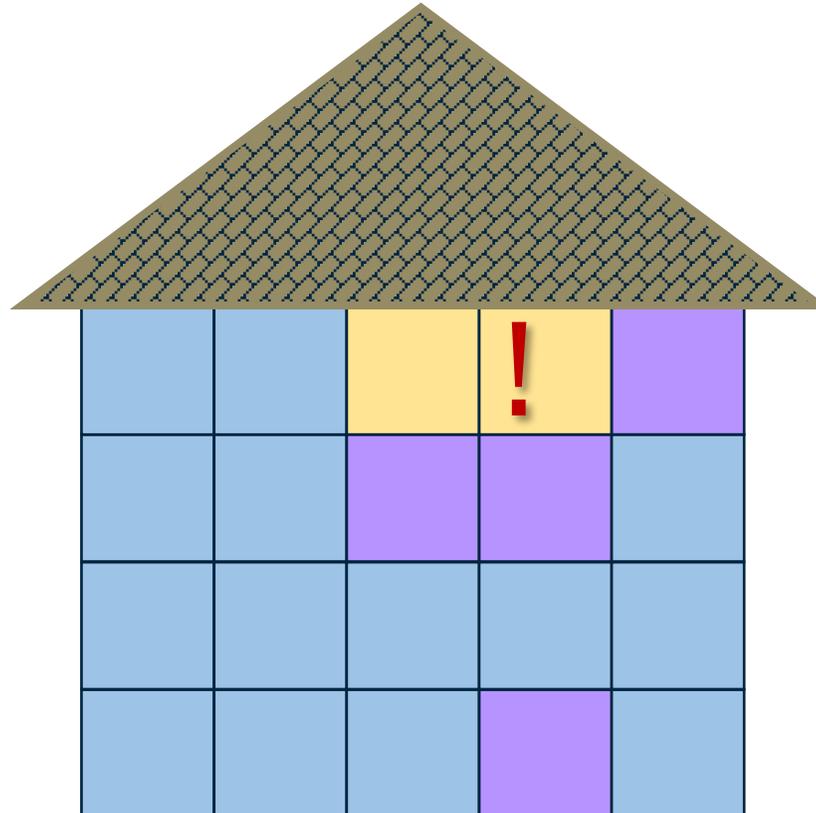
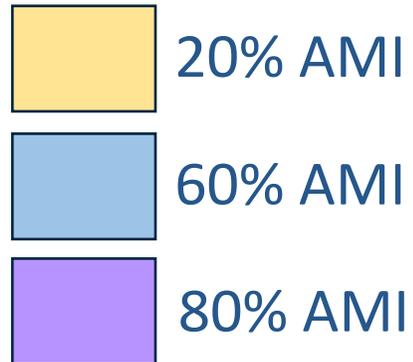
LIHTC units:
 $20/20 = \text{~~100\%~~}$

Project average:
60%



Proposed regulations

Cliff problem



Applicable fraction:
 $19/20 = 95\%$

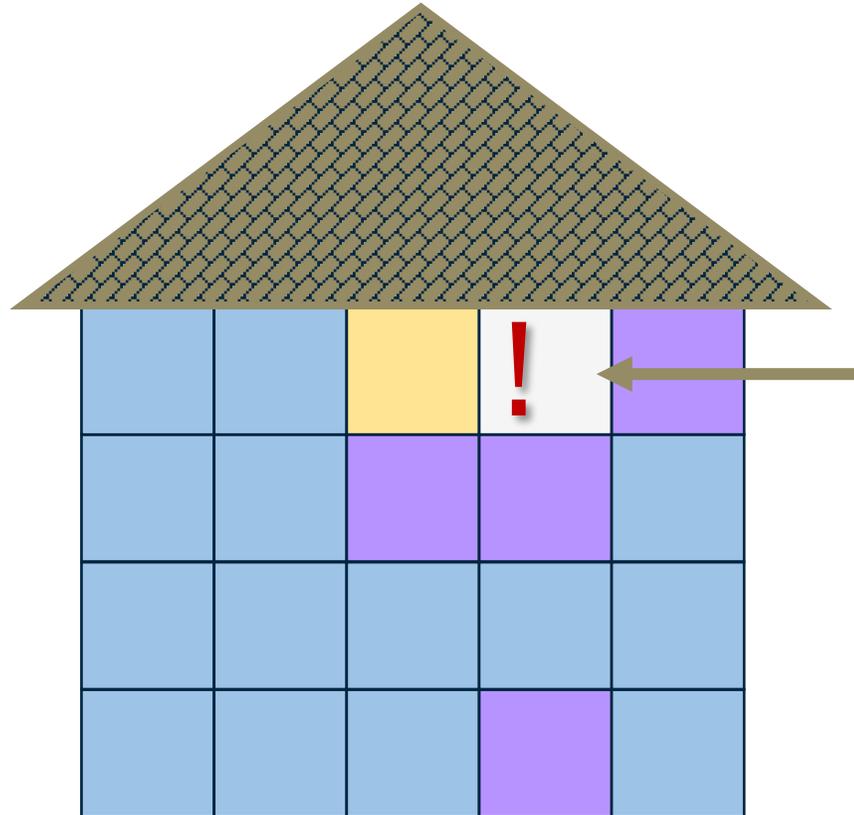
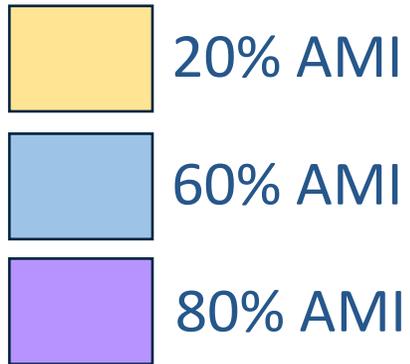
LIHTC units:
 $19/20 = 95\%$

Project average:
60%



Proposed regulations

Cliff problem



Applicable fraction:
 $19/20 = 95\%$

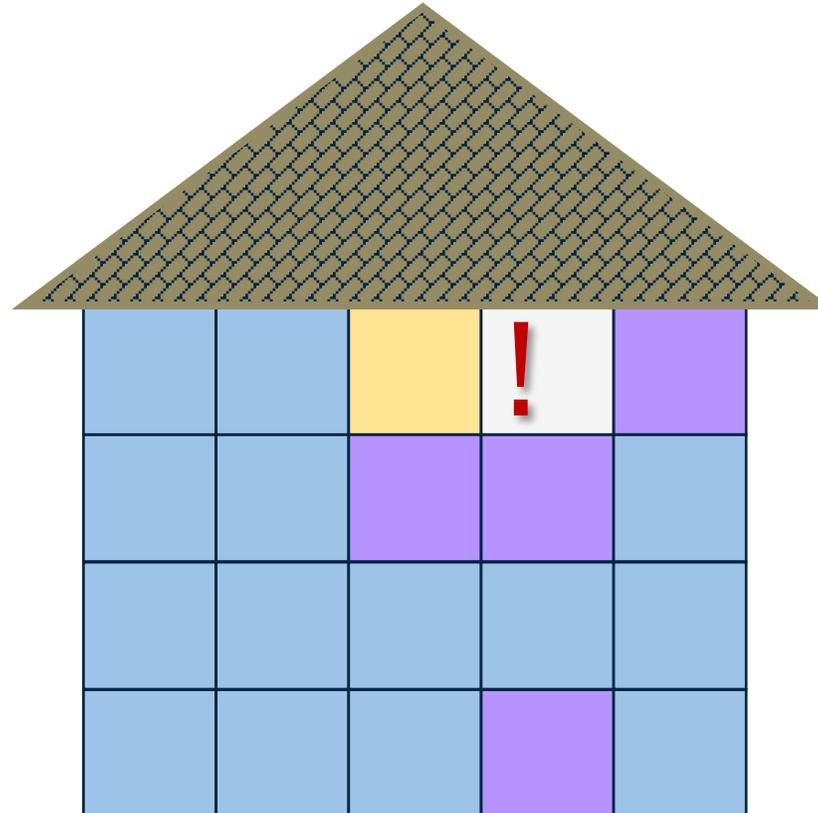
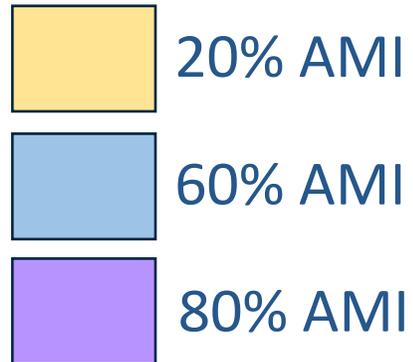
LIHTC units:
 $19/20 = 95\%$



Project average:
~~60%~~

Proposed regulations

Cliff problem



Applicable fraction:
 $19/20 = 95\%$



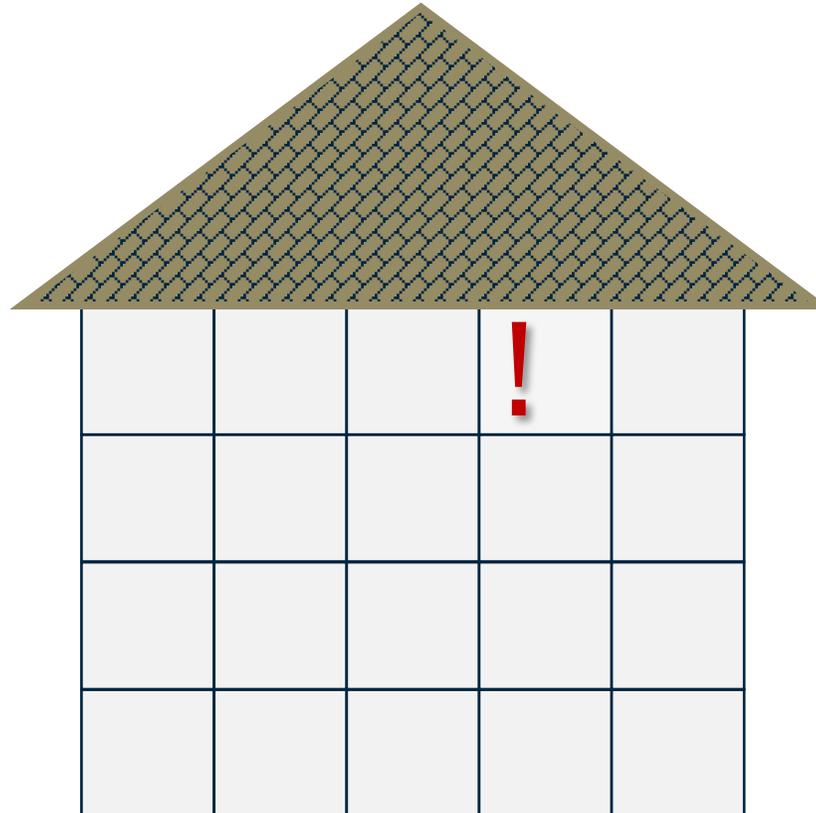
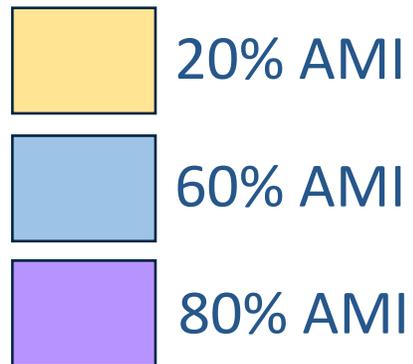
LIHTC units:
 $19/20 = 95\%$

Project average:
62%

Proposed regulations

Cliff problem

Applicable fraction:
 $0/20 = 0\%$



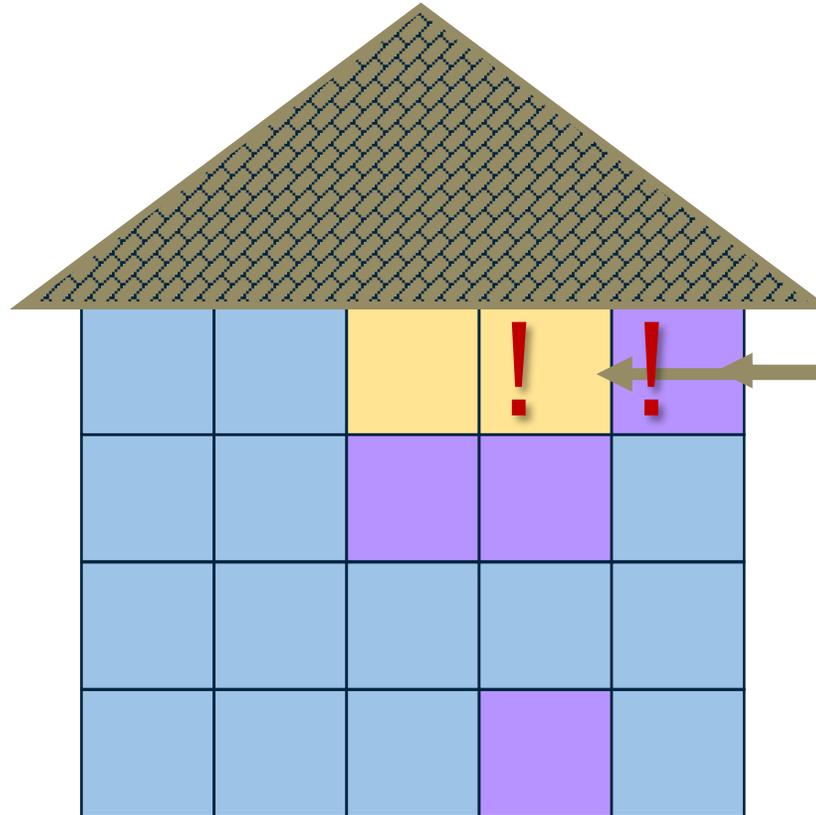
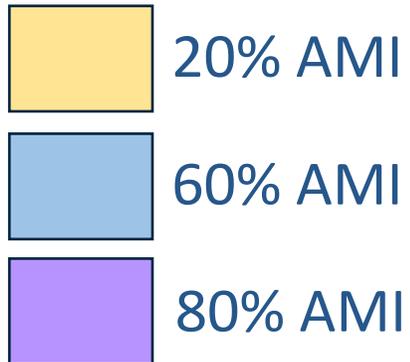
LIHTC units: 0/20
= 0%

Project average:
62%

Proposed regulations

Cliff problem

Applicable fraction:
 $19/20 = 95\%$



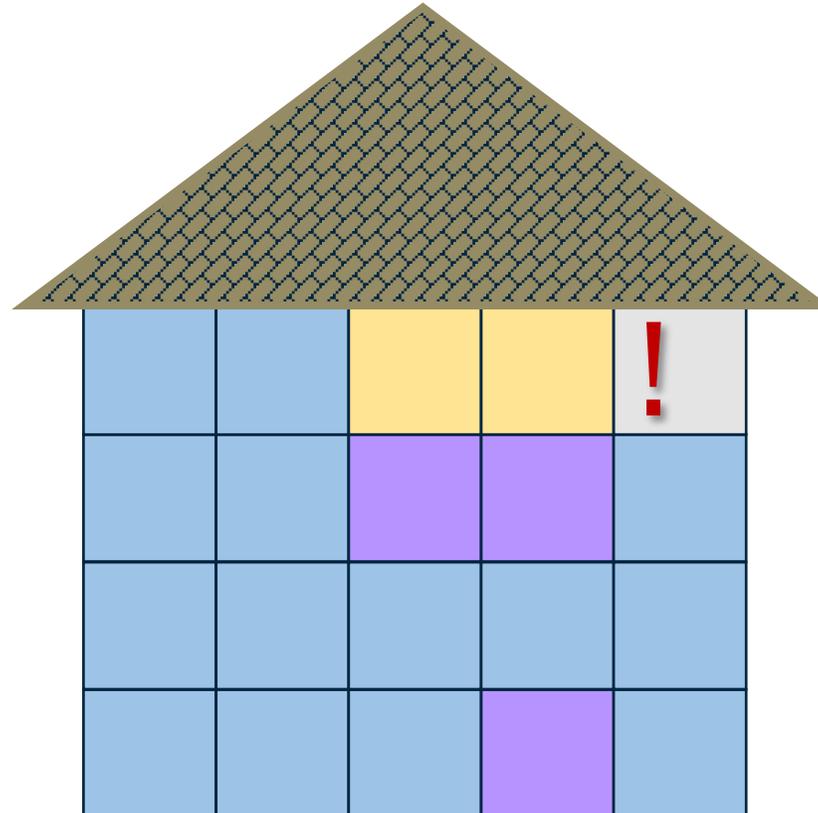
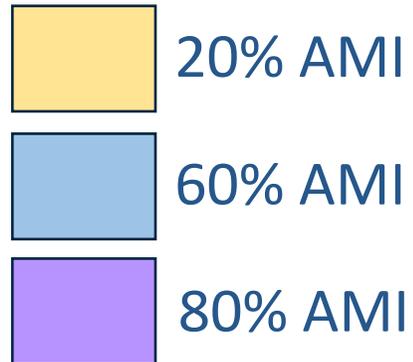
LIHTC units:
 $19/20 = 95\%$



Project average:
60%

Proposed regulations

Cliff problem



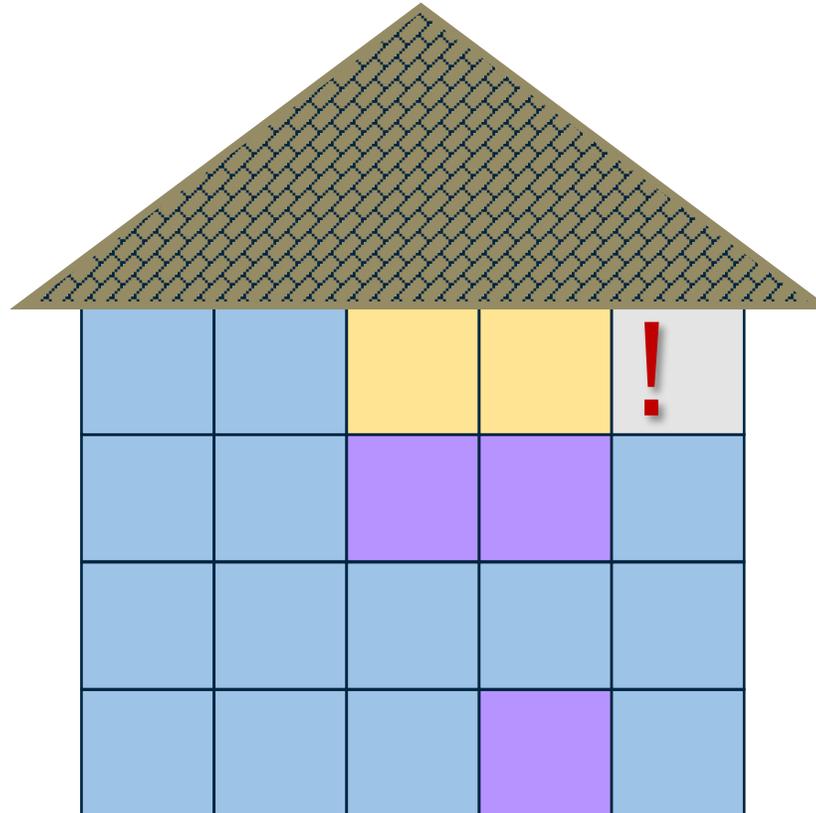
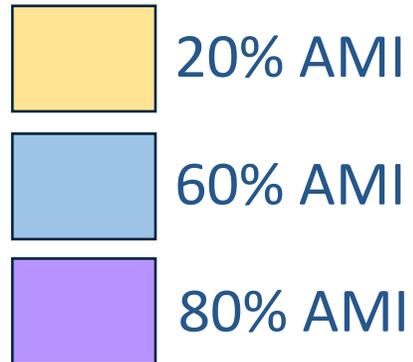
Applicable fraction:
 $19/20 = 95\%$

LIHTC units:
 $19/20 = 95\%$

Project average:
~~60%~~

Proposed regulations

Cliff problem



Applicable fraction:
 $19/20 = 95\%$

✓ LIHTC units:
 $19/20 = 95\%$

Project average:
59%

Proposed Regulations

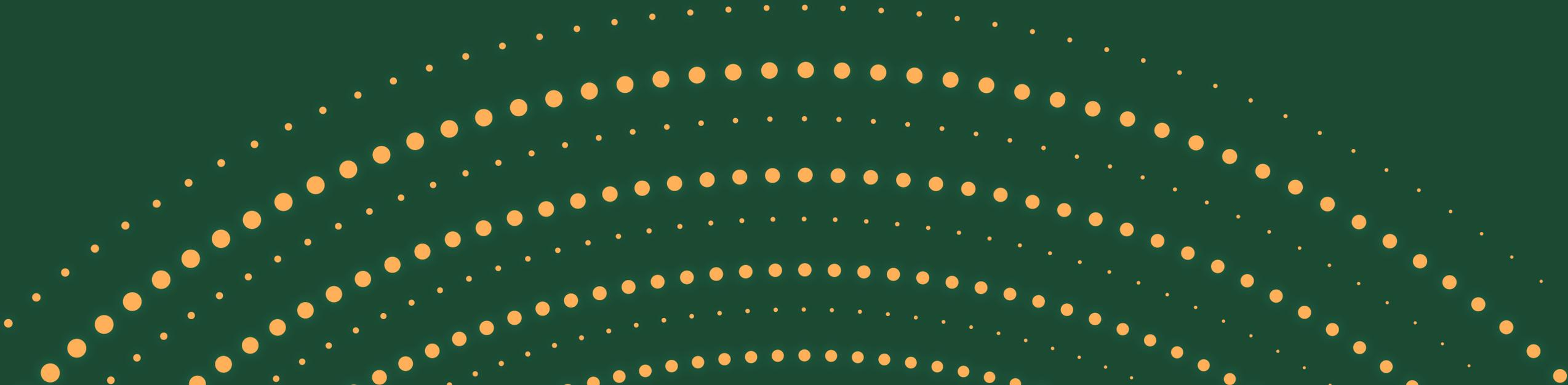
- Status of proposed regulations
 - Public comment
 - Public hearing
- Three typical scenarios after release
 - Property underwritten at 60% and operational
 - Property underwritten and closed with a buffer
 - Property not yet closed
- Potential impacts on NOI

Polling Question

Which of the below best describes your Average Income properties?

- Properties operating with a AI buffer (<60%)
- Properties operating with no AI buffer (60% average)
- Properties electing Average Income under construction
- More than one of the above
- We do not have Average Income properties

4% Floor



4% Floor

- Consolidated Appropriations Act of 2021
 - Minimum credit rate for buildings which don't qualify for 9% is 4%
 - Must be PIS after 12/31/2020
 - For allocated credits (9% acquisition building) – allocation after 12/31/2020
 - For bond projects – bond issuance after 12/31/2020
- Potential impact on planned projects
 - Soft debt/equity
 - Reduced DDF
 - Reduction in hard debt (DSCR)

4% Floor

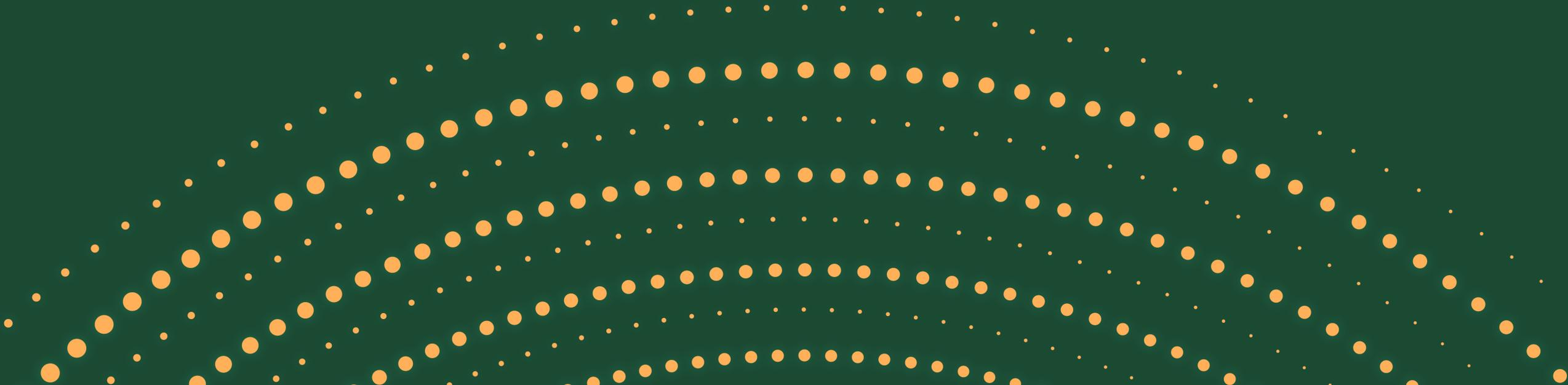
- Effective date issues
 - Draw down bonds – draws straddling 12/31/2020
 - Statute vs legislative intent
 - Stance of syndicators?
 - Subsequent bond issuances due to cost overruns
- 42(m) letter
- 50% test

Polling Question

Do you have any properties which have utilized the 4% floor?

- Yes
- No

Taking LIHTCs Without Form 8609



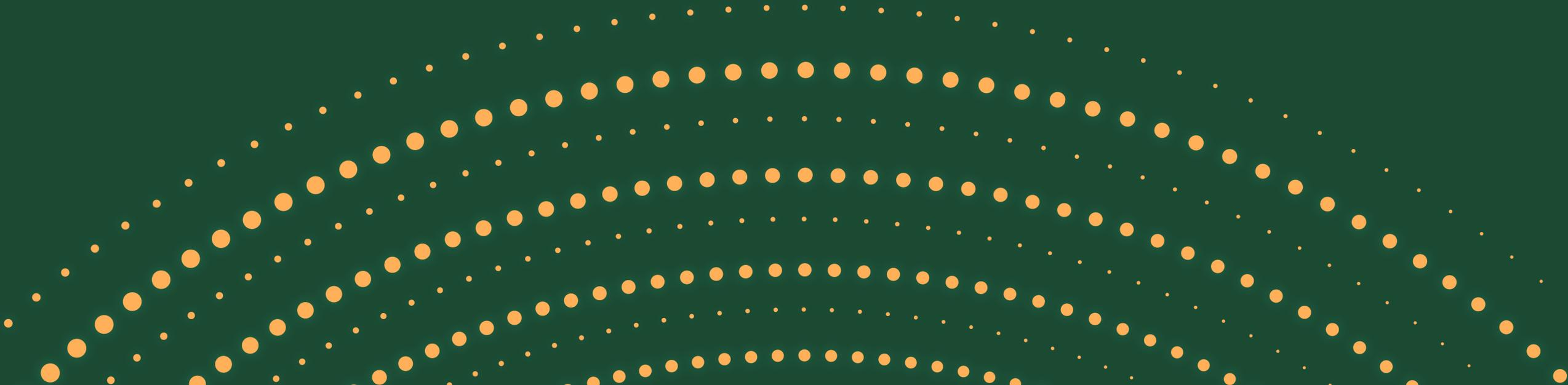
Taking LIHTCs Without Form 8609

- Form 8609-A Instructions
 - “In order to claim the credit, you must have an original, signed Form 8609...issued by a housing credit agency..”
 - “Any building owner claiming a credit without receiving a completed Form 8609...is subject to having the credit disallowed”
- Impact under prior law
- Impact under new law (AAR)

Taking LIHTCs Without Form 8609

- Reasonable cause exception
 - §42(l)(1)(E)
 - “In the case of a failure to make the certification required by the preceding sentence on the date prescribed therefor, unless it is shown that such failure is due to reasonable cause and not to willful neglect, no credit shall be allowable by reason of subsection (a) with respect to such building for any taxable year ending before such certification is made.”
 - Statement included with filed return stating LIHTC taken with reasonable cause and description of reasonable cause
- Reasonable cause exception - scenarios
 - Final credit application submitted to state
 - Construction partially complete - Final credit application not submitted
 - Construction complete – Final credit application not submitted

§168(h) Election



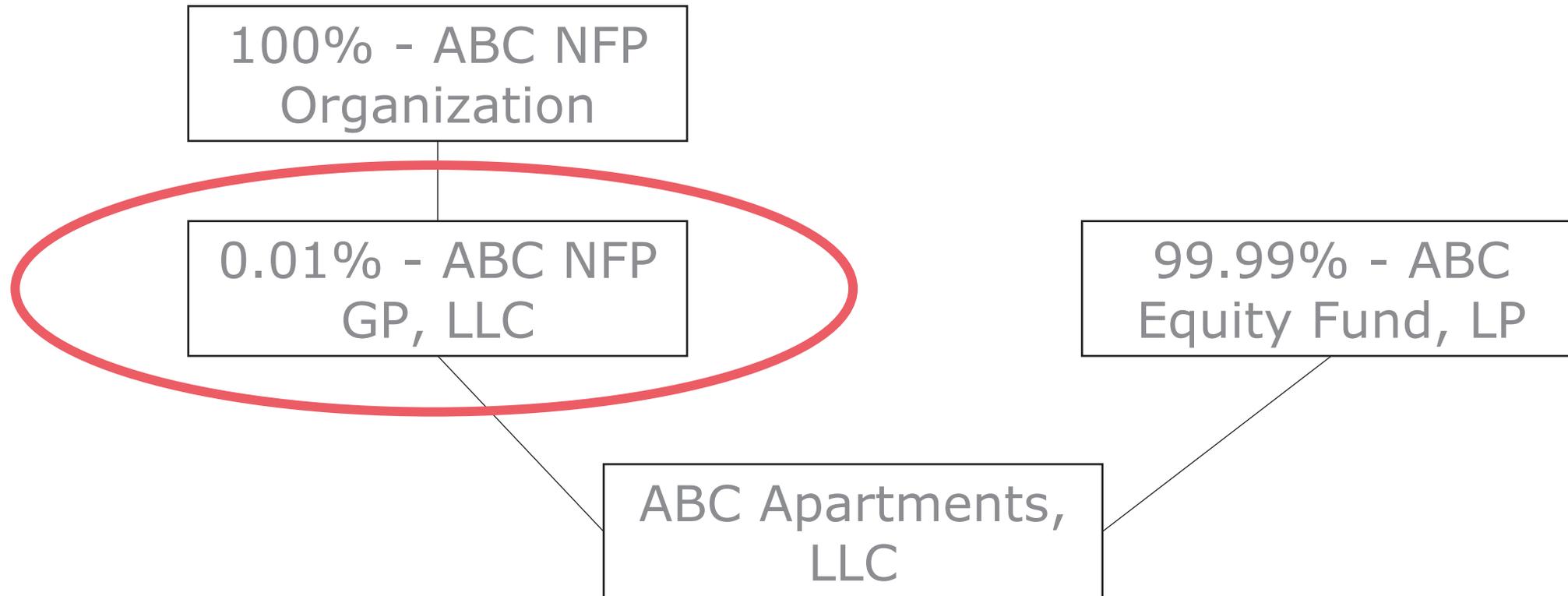
§168(h) Election

- What is it?
 - Election for NFP entity to be treated as a taxable Corporation
 - Check a box election?
 - Form 8832
 - 168(h) – NFP LLC return, Property-level partnership
- Who makes it? – GP level LLC

§168(h) Election



§168(h) Election



§168(h) Election

- Why is it made?
 - Bonus depreciation is not eligible on tax-exempt use property
- In what situation is it made?
 - Qualified allocations
 - Cash flow, benefits, P&L, follows ownership percentages
 - I.e. LP receives 99.99% of cash flow, there is no 90/10 split.
 - Disproportionate allocations
 - Cash flow, benefits, P&L do not follow ownership percentages
 - There is a 90/10 split of cash flow despite ownership percentages

§168(h) Election

- Form 8832
 - Filed with the IRS by the electing entity
 - When: “Generally an election specifying an eligible entity classification cannot take effect more than 75 days prior to the date the election is filed, nor can it take effect later than 12 months after the date the election is filed...”
 - Late Relief

Polling Question

When do your NFP owner LLCs typically make the 168(h) election?

- At closing
- At construction completion
- We aren't required to make the election

CPE Feedback Poll

- If you are seeking CPEs, please complete this brief feedback poll.
- Note: All registrants will receive links to the conference evaluations via email.
 - Please complete the conference evaluations to request CPE credit and to provide qualitative feedback.