Do “Community Preference” Policies Violate the Fair Housing Act?

Part 3: My Conclusions

Nick Arnosti (not a legal scholar)

What are the effects of New York's "Community Preference" Policy?

Part 3: My Conclusions

Nick Arnosti (not a legal scholar)

Talk Overview

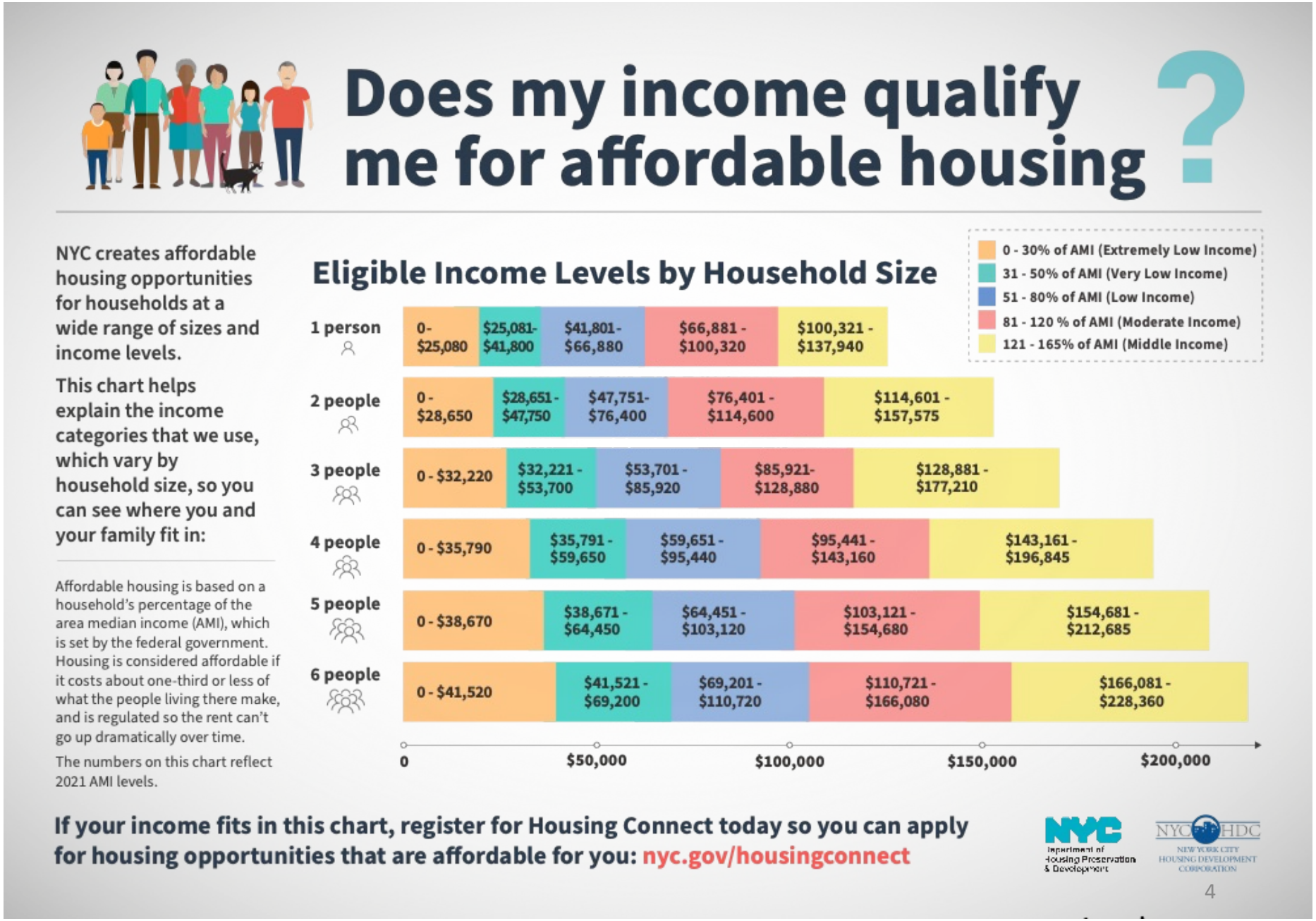
1. Details of allocation process
   - Different unit types.
   - Developer screening algorithm.

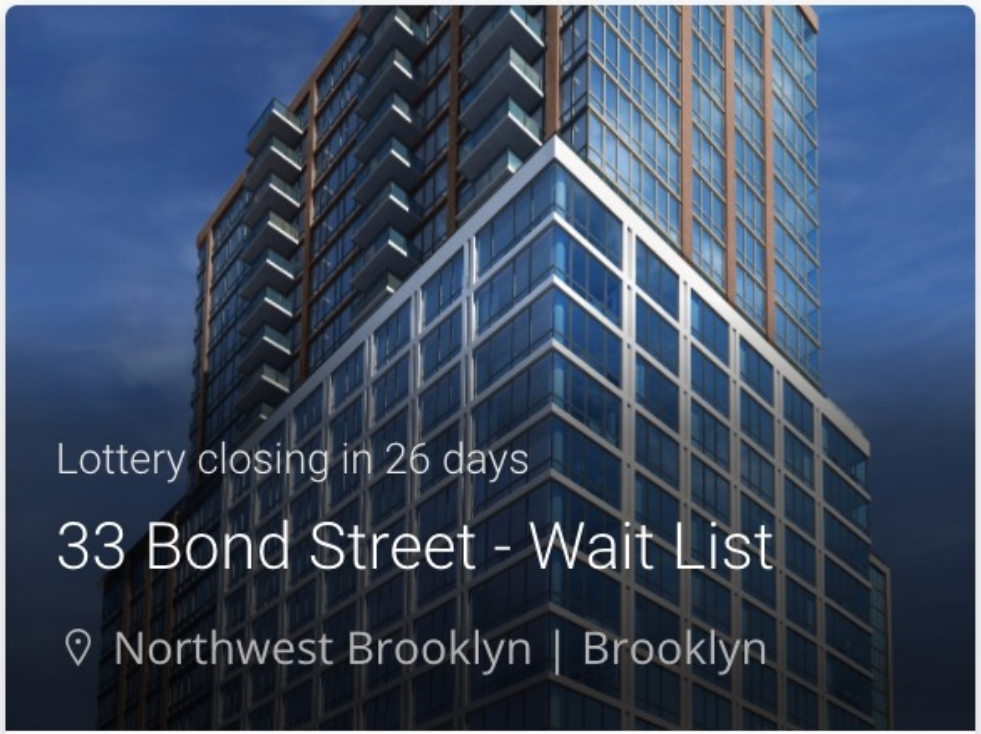
2. Consequence:
   Community Preference disproportionately affects low-income applicants!

3. Revisiting Beveridge's and Siskin's reports.

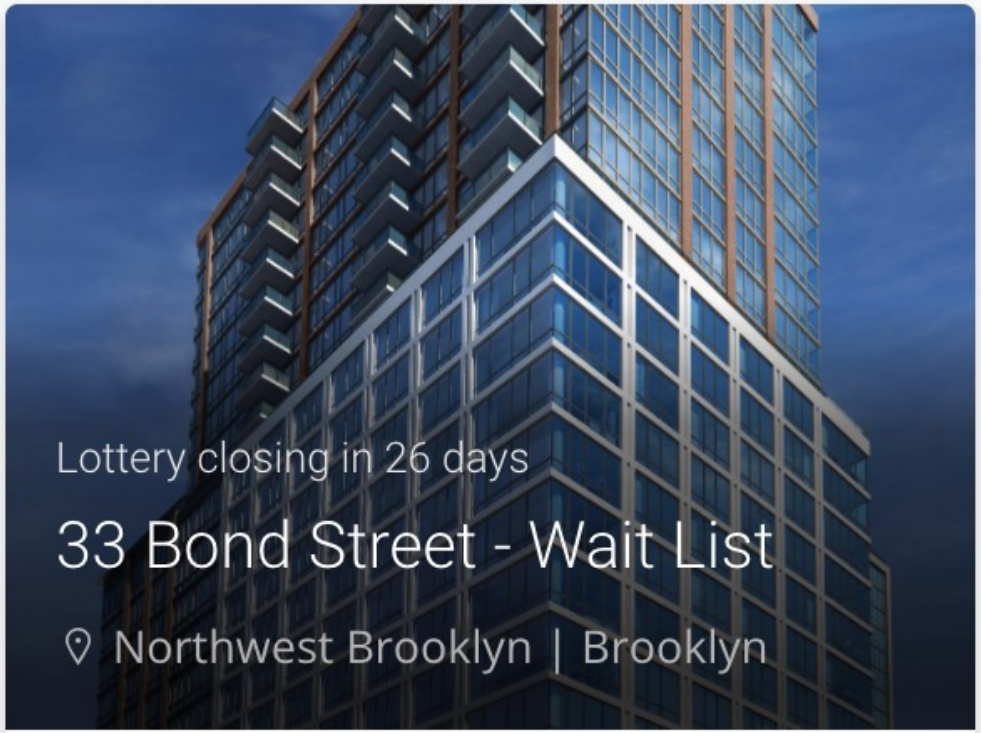
Aren’t all applicants low income?

No.





Units distinguished by
 # bedrooms, **AMI target**.
Only applicants with appropriate
household size and **income** qualify



AMI %	Layout	# Units	Monthly R	Household	Household Income
40%	2 Bedroor	3 units	$813	2 people	$31,646 - $42,720
				3 people	$31,646 - $48,040
				4 people	$31,646 - $53,360
				5 people	$31,646 - $57,640
120%	2 Bedroor	4 units	$2,582	2 people	$92,298 - $128,160
				3 people	$92,298 - $144,120
				4 people	$92,298 - $160,080
				5 people	$92,298 - $172,920

Units distinguished by
 # bedrooms, **AMI target**.
Only applicants with appropriate
household size and **income** qualify

Conclusion:
NOT all eligible households are low-income.

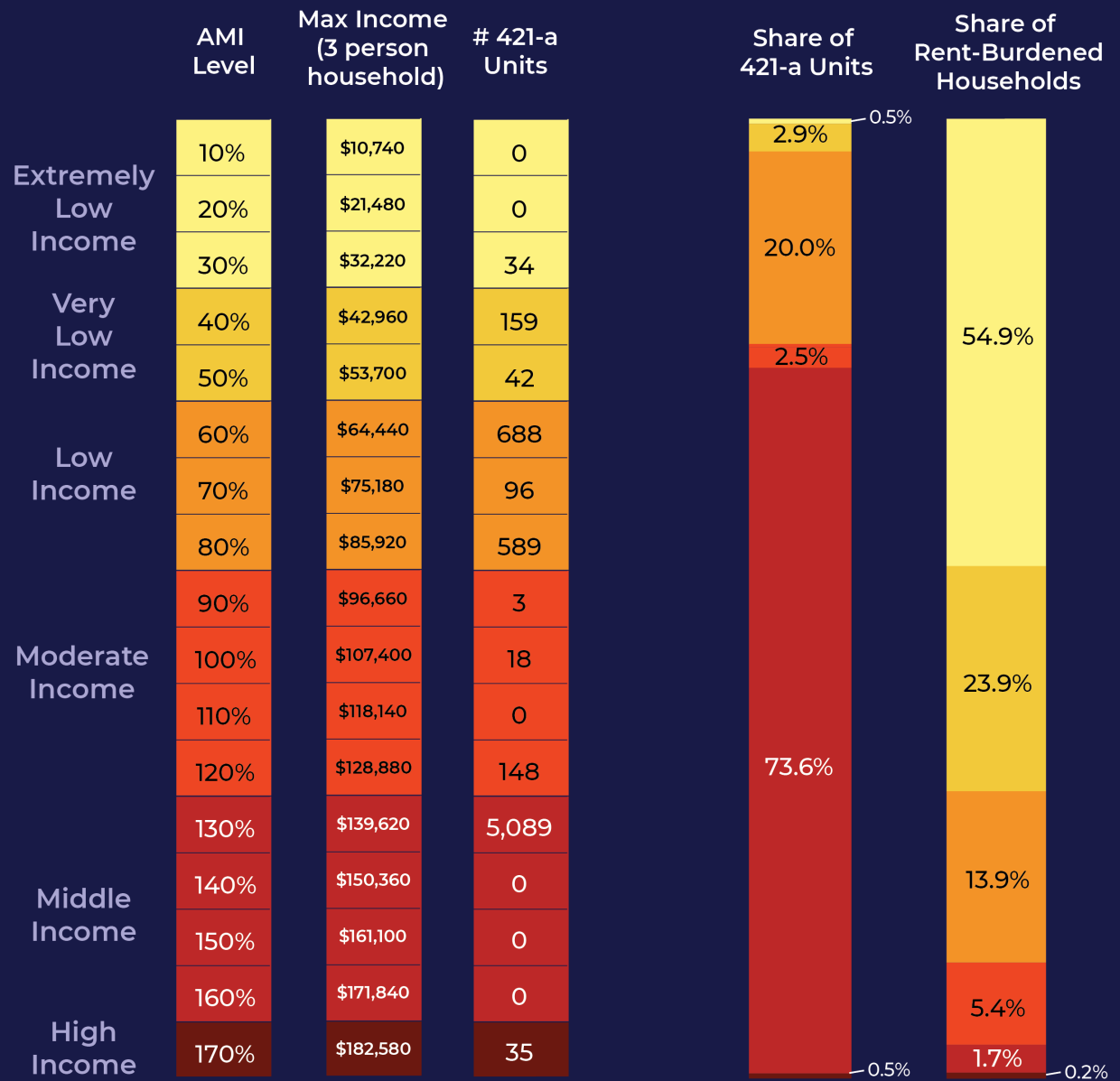
Affordable Housing Lottery Odds Worst for Those Who Can Afford the Least

THE CITY analyzed 18 million applications for apartments and confirmed low-income applicants' deeply felt sense that the system is stacked against them.

BY **RACHEL HOLLIDAY SMITH**, **ANN CHOI** AND **WILL WELCH** | JUN 28, 2020, 10:10PM EDT

Association for Neighborhood & Housing Development

421-a Units Advertised on Housing Connect from 2019-2021 versus Rent Burden by AMI

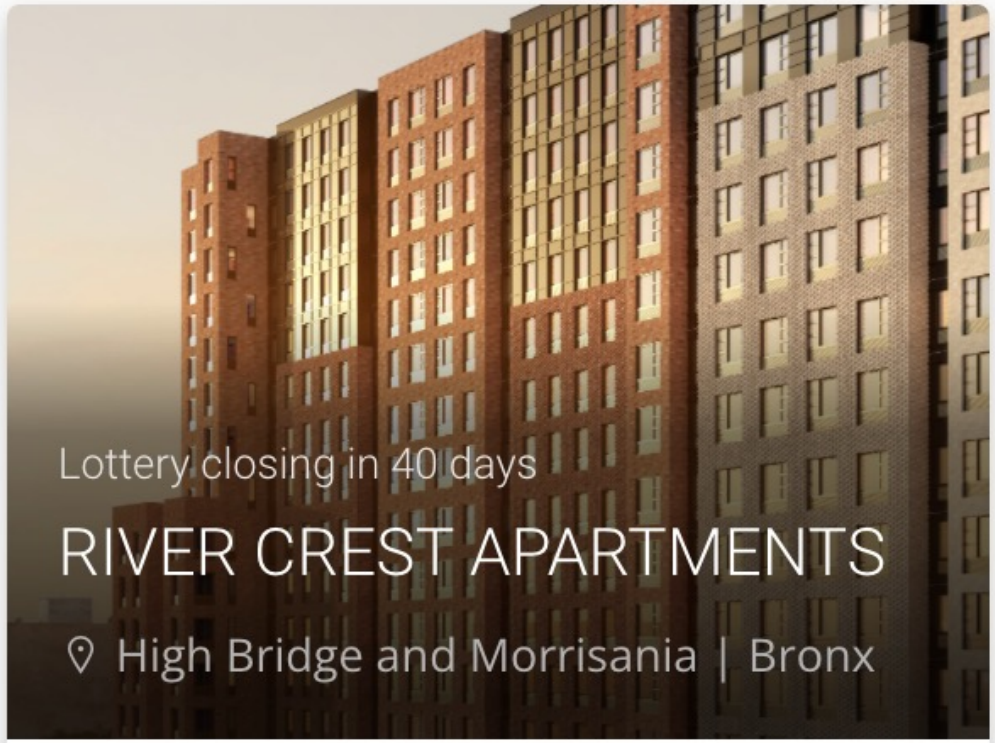


Data sources

Maximum income for a 3-person household per AMI level from 2021 US HUD Income Limits

Units advertised on Housing Connect: NYU Furman Center, furmancenter.org/files/publications/The_Role_of_421-a_Final.pdf (February 2022).

Share of rent-burdened households: ANHD analysis of Census American Community Survey 2019 5-year Estimates Public Use Microdata Sample (PUMS).



225 Units Available

Nearby Transit

4 D

Summary Details Map

AMI %	Layout	# Units	Monthly Rent	Household Size	Household Income
30%	Studio	9 units	$375	1 person	$15,429 - $28,020
				2 people	$15,429 - $32,040
30%	1 Bedroom	17 units	$481	1 person	$19,372 - $28,020
				2 people	$19,372 - $32,040
				3 people	$19,372 - $36,030
				2 people	$19,372 - $32,040
				3 people	$19,372 - $36,030
30%	2 Bedroom	7 units	$588	2 people	$23,932 - $32,040
				3 people	$23,932 - $36,030
				4 people	$23,932 - $40,020
				5 people	$23,932 - $43,230
30%	3 Bedroom	5 units	$672	3 people	$27,703 - $36,030
				4 people	$27,703 - $40,020
				5 people	$27,703 - $43,230
				6 people	$27,703 - $46,440
				7 people	$27,703 - $49,650
40%	Studio	5 units	$535	1 person	$20,915 - $37,360
				2 people	$20,915 - $42,720
40%	1 Bedroom	10 units	$681	1 person	$26,229 - $37,360
				2 people	$26,229 - $42,720
				3 people	$26,229 - $48,040
40%	2 Bedroom	6 units	$828	2 people	$32,160 - $42,720
				3 people	$32,160 - $48,040
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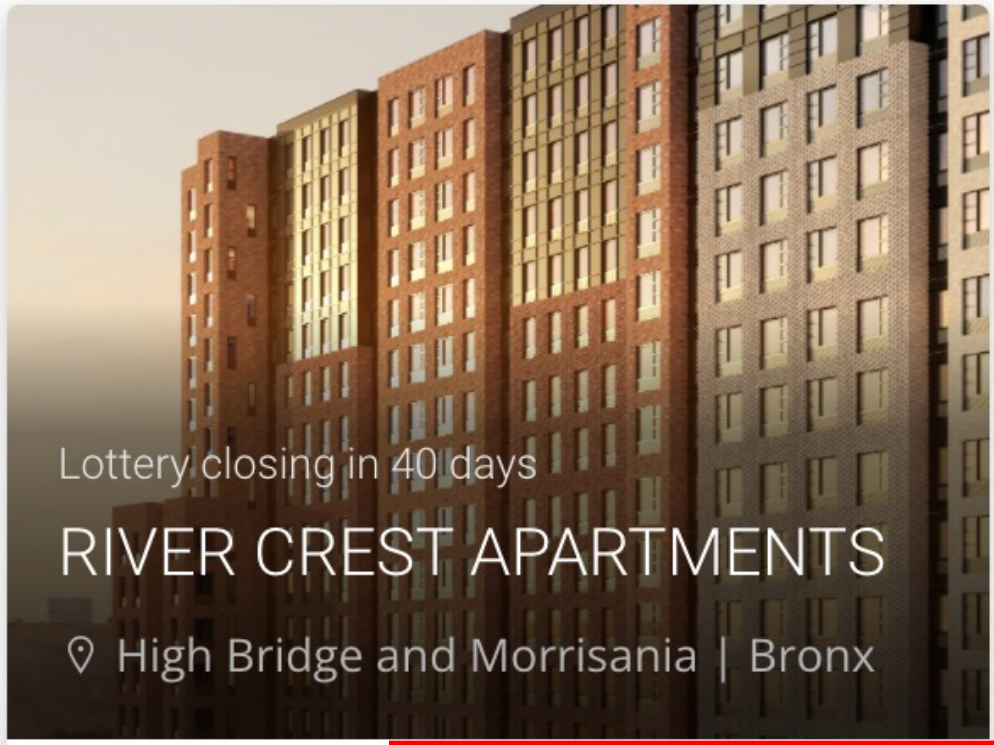
40%	3 Bedroom	5 units	$949	3 people	$37,200 - $48,040
				4 people	$37,200 - $53,360
				5 people	$37,200 - $57,640
				6 people	$37,200 - $61,920
				7 people	$37,200 - $66,200
50%	Studio	6 units	$696	1 person	$26,435 - $46,700
				2 people	$26,435 - $53,400
50%	1 Bedroom	12 units	$881	1 person	$33,086 - $46,700
				2 people	$33,086 - $53,400
				3 people	$33,086 - $60,050



225 Units Available

Nearby Transit

4 D

Summary

A percentage of units are set aside for:

5%	Mobility
2%	Vision/Hearing

Preference for a percentage of units goes :

50%	Community Board Resident
5%	NYC Employee

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How do they handle this all?

1. Order applicants by log number.
2. Satisfy preferences:
   I. Applicants eligible for **disability preference** considered in log order until 7% of units have been allocated.
   II. Applicants eligible for **community preference** considered in log order until 50% of units filled with people from community district.
   III. Applicants eligible for **municipal employee preference** considered in log order until 5% of units filled with municipal employees.
3. **Remaining applicants** considered in log order until all units filled.

Granting someone with multiple preferences a unit counts against each preference's goal.

If household is eligible for multiple available unit types, it chooses which to claim.

What are consequences of using this algorithm?

????

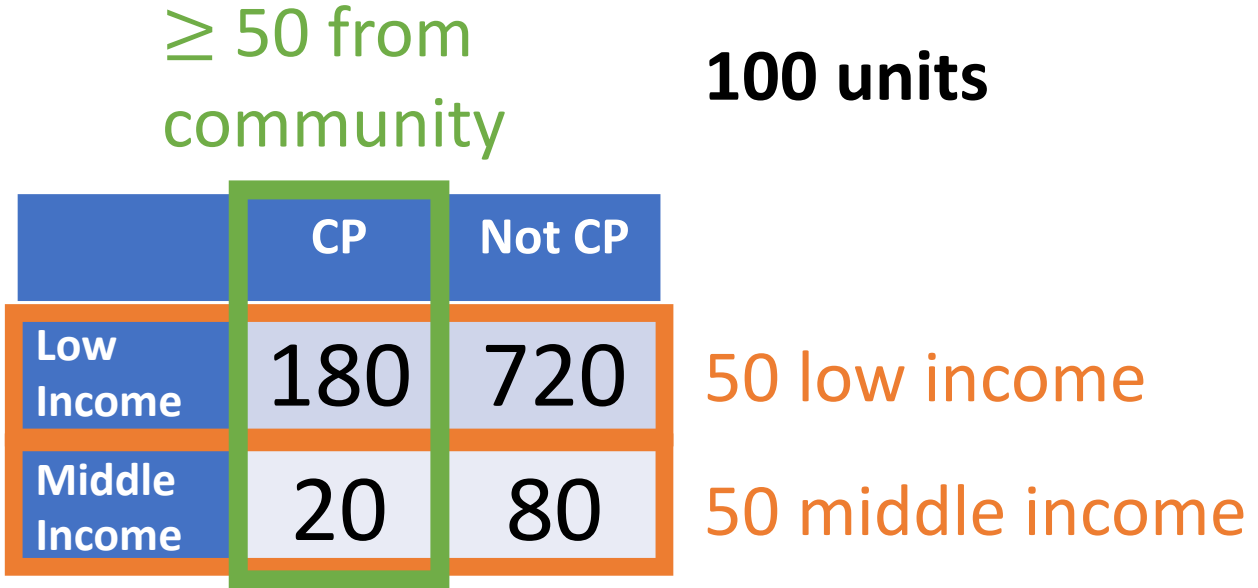
A Simple Example

Assume:

- All units have same number of bedrooms.
- Two non-overlapping target income ranges.
- No disability or municipal employee preferences
- All applicants are eligible and will accept.

1000 applicants:

- 20% from community district
- 90% low income
- Income and community preference are independent.



Outcomes from different policies

Applicant Counts

	CP	Not CP
Low Income	180	720
Middle Income	20	80

No Income Targeting

No Community Preference

	CP	Not CP
Low Income	18	72
Middle Income	2	8

50% Community Preference

	CP	Not CP
Low Income	45	45
Middle Income	5	5

50% Low Income
50% Middle Income

	CP	Not CP
Low Income	10	40
Middle Income	10	40

	CP	Not CP
Low Income	45	5
Middle Income	10	40

The effect of community preference

No Community Preference

	CP	Not CP
Low Income	10	40
Middle Income	10	40

50% Community Preference

	CP	Not CP
Low Income	45	5
Middle Income	10	40

Community members get

- **90%** of low-income seats
- **20%** of middle income seats (same as without CP policy!)

Why is this happening?

The city does **NOT** reserve 50% of each type of unit for community members.

- Community members (like other applicants) are mostly low income.
- They claim most low-income units.
- Few low-income units left for applicants from outside the community.

Why is this happening? (more detail)

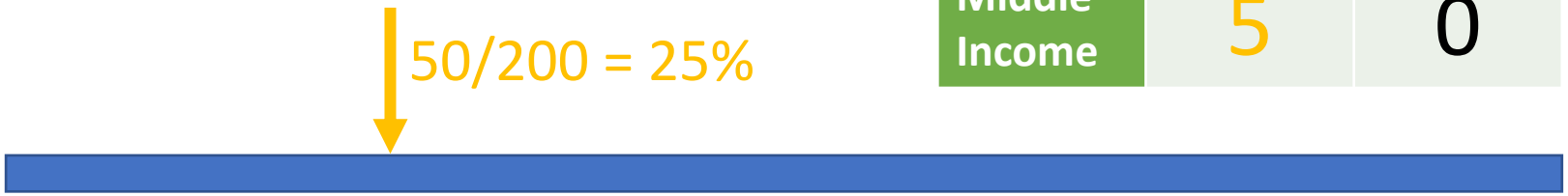
Low Log Number

High Log Number

Why is this happening? (more detail)

First pass: take top 50 community residents.

Community Preference Satisfied



	CP	Not CP
Low Income	45	0
Middle Income	5	0

Why is this happening? (more detail)

First pass: take top 50 community residents.

Community Preference Satisfied

50/200 = 25%

	CP	Not CP
Low Income	45	5
Middle Income	5	0

Second pass:

Fill remaining units

5/720 = 0.7%

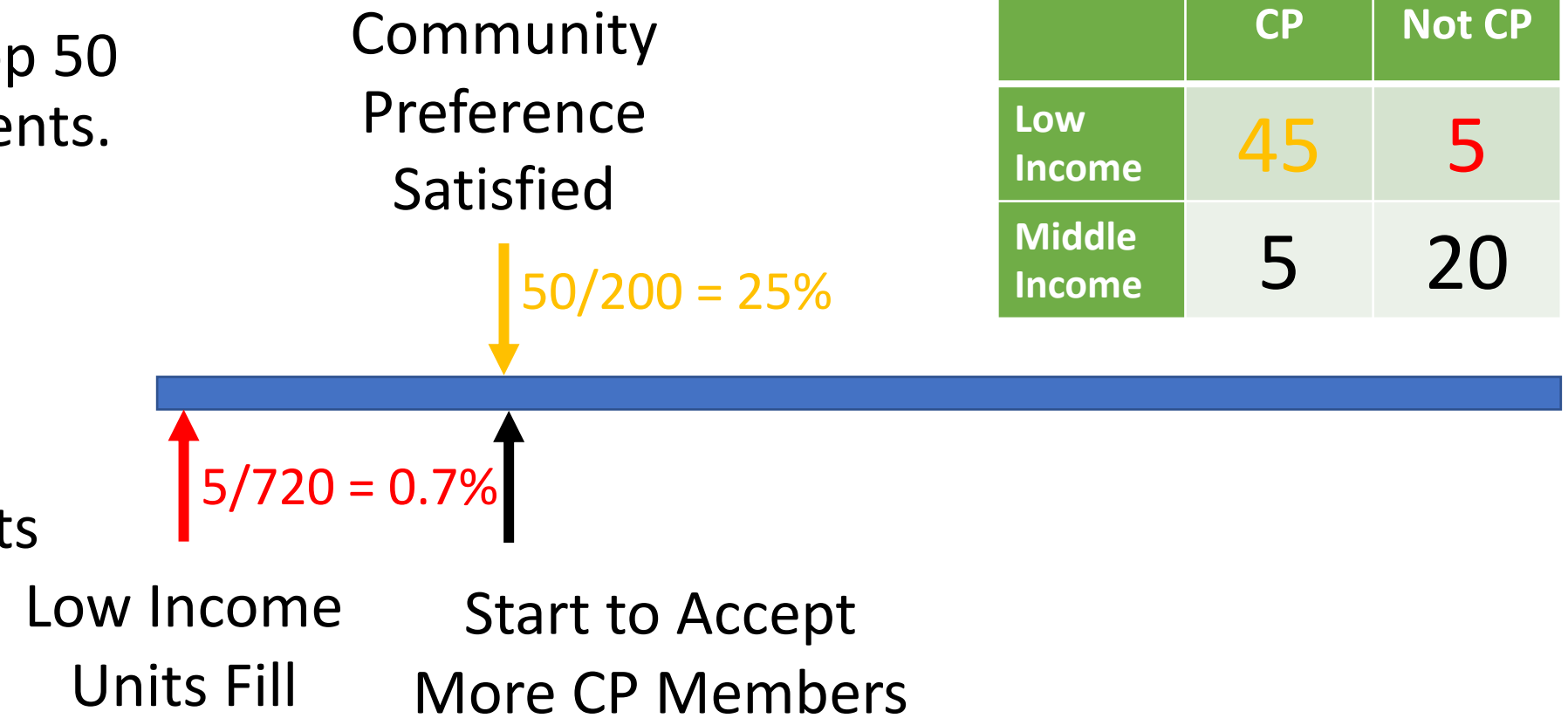
Low Income Units Fill

Why is this happening? (more detail)

First pass: take top 50 community residents.

Second pass:

Fill remaining units



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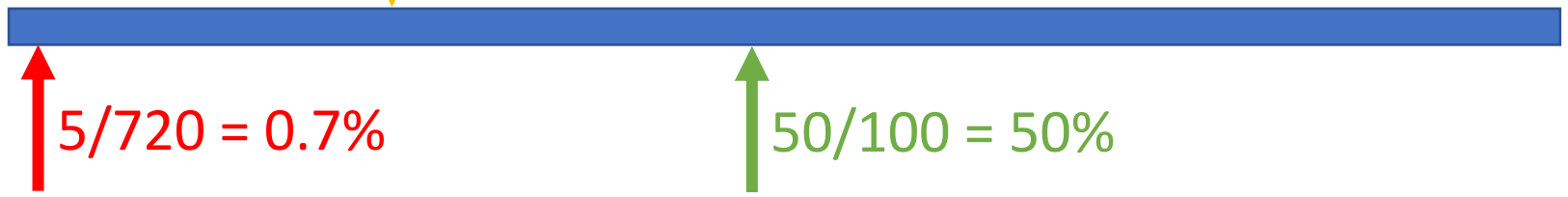


Low Income Units Fill

Middle Income Units Fill

Is this *actually* happening?

We considered a stylized example with made-up numbers…

But the same qualitative conclusions hold so long as

(i) Fewer than 50% of applicants qualify for community preference, and

(ii) competition is fiercest for low-income units.

From Beveridge's Analysis

88. Moreover, particular unit-types for which an applicant HH may be eligible are in limited supply. Depending on the sequence in which applications are processed, it may be the case that **a unit-type for which an applicant HH is eligible will no longer be available by the time that outsiders are reached** (that is, the unit type will be closed out).

89. Of the 892 unit-types for which there were at least one unit awarded to an applicant HH in a lottery, I examined each unit type that had both of the following characteristics:

- At least *five* applicant HHs listed on defendant's status sheets as having received community preference but not having received a disability set-aside; and
- *Zero* applicant HHs listed on defendant's status sheets to outsiders who were not the recipient of a disability set-aside.

90. This subset of unit types, the projects they were associated with, their AMI bands, and the number of lottery units awarded to CP awards of than disability in each unit type are listed in Exhibit 8, hereto.

91. As the exhibit shows, there were 61 such unit types across 36 lotteries encompassing 565 units. 86.9 percent of the unit types, and **89.0 percent of the units were unit types at the 60 percent AMI level or below**.

92. In other words**, there are a substantial number of unit types where HHs who are outsiders not eligible for any preference or set-aside (whose processing is sequenced after CP beneficiary HHs) are closed out** (effectively have no chance to compete for the unit type), even though the unit type might have been the only one for which they were eligible. This is the direct result of the rules governing the allocation of units based upon community preference.

Evidence: types with ≥ 5 units to insiders, 0 to outsiders.

Almost all very low-income units!

HC Project No.	BR Size	Rent	CP awards other than disability	Income AMI
2	1	781	5	60
4	1	659	11	50
4	2	801	5	50
8	1	511	6	40
13	0	474	8	40
13	1	511	8	40
13	2	623	8	40
14	0	814	7	60
16	2	655	10	40
17	1	564	5	40
22	1	659	5	50
22	2	623	6	40
22	2	801	7	50
25	0	1103	7	130
83	1	640	8	50
83	2	1565	6	90
89	1	528	6	40
91	2	648	6	40
94	1	690	14	50
95	0	640	5	50
95	2	835	6	50
111	2	835	39	50
125	0	640	5	50
126	1	533	12	40
149	1	877	5	60
170	0	500	5	40
170	3	972	5	50
181	1	847	6	60
181	2	1024	5	60
183	0	651	11	50
183	1	699	10	50
183	2	849	10	50
198	1	850	7	60
202	1	860	5	60
208	1	769	15	50
211	2	647	6	40
220	1	861	33	60
220	2	1042	17	60
232	1	847	10	60
232	1	1178	5	80
253	1	1208	10	100
253	2	1458	9	100
257	2	655	14	40
257	3	749	8	40
263	1	929	6	60
272	1	690	9	50
272	2	836	9	50
275	1	532	5	40
275	1	847	22	60
275	2	647	8	40
275	3	1182	9	60
276	0	865	9	60
276	0	1729	9	145
276	1	589	6	40
276	1	929	21	60
276	1	1320	5	100
276	2	1121	14	60
276	2	1591	11	100
287	2	1183	7	60
310	2	676	7	40
317	2	1047	7	60

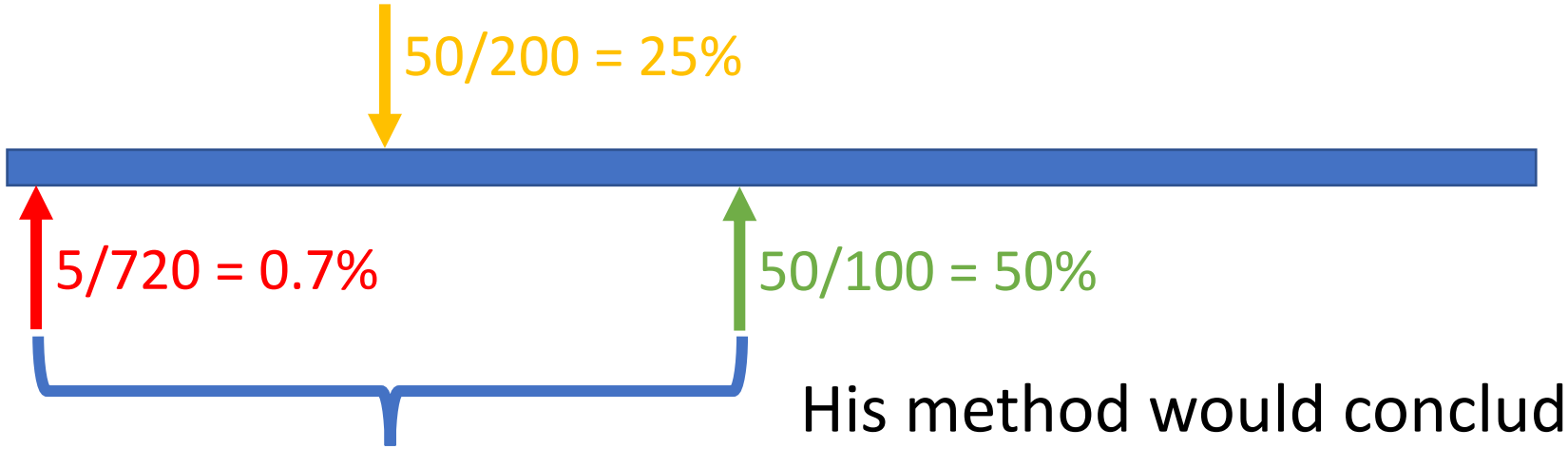
Recall Siskin's conclusions from Part 2…

	Number of Applications	Percent of All Applications	Percent Passing Stage
Stage 1			
Apply	7,245,725	100%	
Found Apparently Eligible	3,124,133	43.12%	42.40%
Stage 2			
Considered	1,059,039	14.62%	33.90%
Stage 3			
Awarded	10,245	0.14%	1.0%

I don't believe that 1/3 of applicants are considered, and only 1% of these are eligible and interested!

Siskin's Method for Determining Considered Applications

I assumed that people with lottery numbers lower than highest lottery number of the awarded application from that preference list had been considered…



His method would conclude 500 households were considered.
In reality, only 100 had chance to match!

Siskin's Method for Determining Considered Applications

His analysis does consider **unit size**: a household is not "considered" if all unit sizes for which it is eligible were allocated before its turn.

However, he makes **no reference to income**. A household is treated as "considered" even if its income does not qualify it for any remaining units.

Conclusion: this method significantly overestimates considered applicants!

Siskin's Method for Determining Considered Applications

I assumed that people with lottery numbers lower than highest lottery number of the awarded application from that preference list had been considered…

If… the log number of the application at issue was 1,000, but that application was only eligible for a 3 bedroom unit and… the highest log number that resulted in an award to any 3-bedroom unit was 900, then the application at issue with log number 1,000 would not be a Considered Application, because any eligible units were filled before that log number was reached.

However, if a 3-bedroom unit was awarded to log number 2,000 (rather than 900), log number 1,000 would be a Considered Application, as it was considered for a unit and was not awarded a unit for a reason other than lack of availability, as evidenced by the fact that a higher log number was awarded a 3-bedroom unit.

Community Preference Policy: Summary

1. Disagreements primarily about definitions (what is meaning of "disparate impact on race"?), rather than math.

2. Existing policy has unintended consequences:
   Most or all low-income units go to community residents.
   Not clearly stated in nearly 200 pages of reports!

Bonus material: how else could community preference be implemented?