



March 5, 2021

Dillon Taylor  
Office of Chief Counsel  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

Michael J. Torruella Costa  
Office of Chief Counsel  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

*Via Federal eRulemaking Portal*

**Re: Public Hearing Topic Outline on REG–119890–18: Average Income Minimum Set-aside**

Dear Mr. Taylor and Mr. Torruella Costa:

On behalf of the members of the Novogradac LIHTC Working Group (LIHTC Working Group), we are responding to the Internal Revenue Service (IRS) Notice Document Citation Number REG–119890–18: Average Income Minimum Set-aside (the Regulations) request for outlines of topics to be discussed at the public hearing scheduled for March 24, 2021 at 12 p.m.

Our outline, set forth in the appendix to this letter, identifies topics that we wish to make oral comments on at the public hearing and the time we wish to devote to each topic. We selected three critical topics that are addressed in our written comment letter on the Regulations dated December 29, 2020.

The three topics in which we wish to make oral comments on are:

1. Concerns relating to interpretation of the Minimum Set-Aside election
2. Unit Designation changes
3. Grace period for correcting non-compliance

The members of the LIHTC Working Group are participants in the affordable housing development and finance field, and include for-profit and nonprofit developers, investors, tax credit syndicators, lenders, lawyers, and other related professionals.



Public Hearing Topic Outline on REG-119890-18: Average Income Minimum Set-aside  
Novogradac LIHTC Working Group

We look forward to an opportunity to discuss these issues during the public hearing scheduled for March 24, 2012.

Yours very truly,

Novogradac & Company LLP

By 

Thomas Stagg, Partner

CC: Michael Novey, Office of Tax Policy, Treasury

Nicole Cimino, Office of Associate Chief Counsel, IRS

Jian Grant, Office of Associate Chief Counsel, IRS

Attachments: Public Hearing Topic Outline on REG-119890-18: Average Income Minimum Set-aside

Public Hearing Topic Outline on REG–119890–18: **Average Income Minimum Set-aside**  
Novogradac LIHTC Working Group

1. Concerns relating to interpretation of the Minimum Set-Aside election (6 minutes)
  - a. Issue: the proposed guidance applies the minimum set-aside election in a manner that is inconsistent with IRC Section 42 and other minimum set-aside elections.
    - i. Background of the issue
    - ii. Recommendation to resolve the issue
    - iii. Statutory basis
2. Unit Designation change (2 minutes)
  - a. Issue: the inability to change designations of units over time creates issues with other federal programs and is not required by IRC Section 42.
    - i. Background of the issue
    - ii. Recommendation to resolve the issue
    - iii. Statutory basis
3. Grace period for correcting non-compliance (2 minutes)
  - a. Issue: the proposed timeline to correct non-compliance does not allow sufficient time to identify and respond to non-compliance.
    - i. Background of the issue
    - ii. Recommendation to resolve the issue
    - iii. Statutory basis