

Public Comment Related to Section 42, Low-Income Housing Credit Average Income Test Regulations (REG-119890-18)

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Public Comments

IRS REG-119890-18, REG-104591-18

Request for Comments on an Alternative Mitigating Action Approach

Current proposed regulations allow two mitigating actions to be taken within 60 days after the close of the calendar tax year in which a violation occurs:

- Convert a market unit to low income to ensure average is 60% or less. Unit must be vacant or occupied by a qualifying household.
- Convert a current low income unit as "removed" for credit calculation purposes, as long as the removal would not cause less than 40% of the units to be low income.

Third action proposed and seeking comments:

- If average test exceeds 60% as of the close of the calendar year, owners would be able to re-designate the set aside of a current low income unit in order to meet the average test of 60% or less.

COMMENTS: With respect to the third proposed action, I request that the option be available to owners and be an approved mitigating action in the final regulations. This action would allow flexibility in ensuring the average of 60% is maintained. Owners should be permitted to update unit set asides as needed, as long as the current resident meets the restrictions of the new set aside or the unit is vacant and held for occupancy for qualified residents at the new set aside.

No Subsequent Change to the Imputed Income Limitations

Current proposed regulations state that the initial designated imputed income limit for a unit can not be changed. If changed or removed, the unit ceases to be a low income unit

COMMENTS: With respect to this proposed regulation, I highly recommend this regulation be removed. Flexibility should be given to owners and housing credit agencies with regard to unit income designations. Owners should be permitted to change unit designations based on the needs of the community and the residents, so long as the changes in unit designations do not cause the average to exceed 60% and so long as the unit mix remains reasonable according to the housing credit agency.