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December 29, 2020

SUBMITTED VIA REGULATIONS.GOV

Re: Docket ID: IRS Section 42, Low-Income Housing Credit Average Income Test Regulations
Docket Number: REG-104591-18, Docket RIN: 1545-BO92

To Whom It May Concern:

I write to you on behalf of Home Forward, a Public Housing Authority (PHA) and largest provider of affordable housing in the state of Oregon. The mission of Home Forward is to assure that the people of the community are sheltered. One of the ways that we advance our mission is by developing and operating affordable housing.

As an experienced developer, owner and operator of affordable housing, Home Forward writes to express significant concerns about the following provisions of the proposed rule.

Minimum Set Aside Test

Under the proposed rule, to meet the Average Income Test (AIT) minimum set-aside test, the average of the imputed income limitations of the low-income units in a project may not exceed 60 percent of Area Median Income (AMI). Any non-compliance, even a single event, could result in a violation of the minimum set-aside requirement and a potential loss of all tax credits at the project for the calendar year. These consequences are not only extreme, they are significantly more restrictive than what is required in statute (Code Section 42(g)(1)(C)(ii)(II)) and increase overall financial risk to the owners and its investors. This would likely result in investors being averse to investing in projects using AIT, which would lower tax credit pricing, thus adding costs to projects by necessitating additional debt or public resources. A reduction in tax credit pricing reduces the positive impact of the low-income housing tax credit on the production and preservation of affordable housing.

Although proposed rule allows for mitigation actions to correct AIT minimum set-aside violations, the proposed timelines and structures do not fall within standard audits and housing compliance processes and timelines.

In view of the aforementioned concerns, we urge the IRS to amend the proposed rule to provide that the 60% average be calculated based on the imputed income *designations* made by the owner of a tax credit project, rather than the actual rental of specific units.
While a unit not in compliance with its designated income and rent restriction should not generate tax credits, and should be subject to recapture, this alignment of the rule with the language of the

Code would help address the disproportionate risk that a single instance of non-compliance (even in a 100 percent affordable project), and could result in the total loss of credits for that project. This removes the excessive penalty for a set-aside violation and aligns with the original intent of the set-aside rule.

Designations – Specific Unit Income Level vs Average Imputed Income Limitations (S1. 42-19(a)(3)

Once the initial designation is made, the proposed rule does not allow any changes to the designated imputed income limitation of individual units. Owners need to be able to change income designations to address units where someone's income increases over time. One of our goals as an owner and operator of affordable housing is to enable our residents to increase their incomes, achieve stability and move towards self-sufficiency. Allowing owners to change income designations of specific units balances the policy goals of providing individual households with stability while maintaining the overall affordability and compliance of the project.

Another consideration for the need to change unit income designations, as mentioned in the proposed rule itself, unit income designations may need to be changed when units are offline due to fire or other casualty loss in order to maintain average income compliance.

We urge the IRS to revise the proposed rule to allow for changes in the designation of specific units while maintaining the overall affordability, to balance tenant stability with project affordability.

Thank you for the opportunity to comment. Please contact Taylor Smiley Wolfe, Director of Policy and Planning, Home Forward at 503-957-8760 or taylor.smileywolfe@homeforward.org regarding these comments.

Sincerely,
Taylor Smiley Wolfe
Director of Policy and Planning
Home Forward