



**HOMEOWNER'S REHAB, INC.**  
280 Franklin Street  
Cambridge, MA 02139

December 22, 2020

Sunita Lough  
Deputy Commissioner for Services and Enforcement  
Internal Revenue Service  
1111 Constitution Avenue Northwest  
Washington, District of Columbia

**RE: REG-119890-18 Proposed Regulatory Changes**

Deputy Commissioner Lough:

Upon review of the IRS's proposed regulation changes to Section 42, Homeowners Rehab Inc. (HRI) was pleased to see several prudent revisions, such as the proposal to allow multiple over-income households to be cured with the Next Available Unit in any order. However, the reason we are compelled to provide commentary today is to strongly object to another change proposed in these regulations: the prohibition against re-designating the AMI unit tier of a specific unit for the purposes of ascertaining the Average Income for the building. Perhaps your agency suggested this change to prevent an owner or property manager from mistakenly moving in an incorrect AMI household out of confusion about their project's overall affordability average if re-designation were allowed. While it may seem like such a clear cut rule would be beneficial to LIHTC projects by reducing the risk of managerial mistakes, in reality this change will make Section 42 compliance more onerous for project owners and will be detrimental to their projects. More importantly, if implemented, this proposed change will significantly disadvantage lower income households, the very households who are most in need of affordable housing. It is for these reasons that HRI supports an Income Averaging election that allows the flexibility to re-designate AMI tiers of units.

HRI's knowledge and experience of the recent Income Averaging election comes by way of our recently re-financed and re-syndicated project, located at 808-812 Memorial Drive ("808") in Cambridge, MA. We utilized the new Income Averaging election not only because it allowed for a larger applicable fraction, thereby generating more equity to finance an expensive rehab, but also because the election itself provides manifold benefits to both HRI and the tenants of the property. 808 is a 300 unit, mixed-income and mixed-use property split across two separate buildings that were originally developed as part of HUD's Section 236 program. One building, 808 Memorial Drive, contains 89 regulated affordable units. The other building, 812 Memorial Drive, contains 211 total units, of which 123 are regulated affordable and the remaining 88 are unregulated market units. As a result of the prepayment of the HUD 236 mortgage in 2019, which triggered the release of Tenant Protection Vouchers for all regulated units, HRI worked with the Cambridge Housing Authority to "project base" these vouchers. This allowed HRI to provide rental assistance to all 212 affordable units through a Project Based Voucher ("PBV") Housing Assistance Payment ("HAP") contract. The HAP contract sets rent at 110% of the Fair Market Rent for the Boston metro region (roughly equivalent to 85-90% of AMI rents). The tenants in PBV units simply pay 30% of their household income, as determined by the Cambridge Housing Authority. These HAP contract rents are still far below the prevailing, unregulated market rents for the neighborhood, which are at approximately 105-110% AMI.



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As might be expected for such a large building that has been existence for decades, the current tenant population is variegated in terms of household size, income, and length of tenure. Some tenants have lived at the property since it was constructed in the mid-1970s before Section 42 was even conceived. Below is a crosstabulation of households in affordable units by bedroom size and AMI tier, as of early 2020:

	808 Actual Income						812 Actual Income				
	1BR	2BR	3BR	4BR			1BR	2BR	3BR	4BR	
30%	0	32	11	3	46	30%	43	33	0	0	76
50%	0	9	6	0	15	50%	14	6	1	0	21
60%	0	8	4	0	12	60%	6	5	0	0	11
80%	0	8	2	0	10	80%	2	7	0	0	9
95%	0	0	2	0	2	95%	1	1	1	0	3
>95%	0	0	2	1	3	>95%	1	0	0	0	1
Vacant	0	0	1	0	1	Vacant	2	0	0	0	2
Market	0	0	0	0	0	Market	59	29	0	0	88
	0	57	28	4	89		128	81	2	0	211

Electing the Income Averaging option allows us to capture the eight households at the 80% AMI tier that could not be grandfathered in from the prior syndication. Unit tier re-designation also allows us to mitigate the complications of the Next Available Unit rule for this particular property. Most of the tenants at this property would qualify as extremely low-income (below 30% AMI). With units designated at true household AMI, the average affordability of the project is closer to 40% AMI. In addition to providing a cushion to minimize the risk of exceeding 60% average affordability, reserving this “excess” affordability and allowing for unit re-designation also enables us to boost the AMI tier of a household at risk of going over-income into the 80% tier, thereby allowing them to remain in the LIHTC program.

This ability to re-designate AMI tiers is particularly important at a property such as 808, with project-based subsidy and neighborhood market rents well above the LIHTC rents. If a 60% or lower tenant becomes over-income at 84% AMI, it would be difficult to increase their rent to the equivalent market rent without displacing the tenant. Instead, HRI would continue to charge an affordable rent for their income, which would result in less rent overall for the property. In addition, the over-income tenant might still qualify for their project-based subsidy on the HAP contract. Since there are only a finite amount of PBVs available for the property, the new low-income tenant moving-in to a former market unit due to the Next Available Unit rule will not benefit from rental assistance, creating additional complications. It is not even clear where we would find this new low-income tenant, as the waitlist for affordable units and tenant selection plan are tailored to the PBV units. This complication and financial impact can be avoided by simply re-designating the individual tenant to a higher AMI tier, so long as the excess affordability allows such a re-designation.

Relatedly, tenants on the waitlist for a PBV unit can qualify for a project-based unit if their household income is below 50% AMI. If a vacant PBV is designated at 30% and such a designation is immutable, this would force HRI to skip over a household on the waitlist above 30% AMI, even if this household has been on the waitlist for years, because they are paradoxically not poor enough to qualify for affordable housing. Additionally, such a policy amplifies the negative impact of an over-income tenant mistakenly moved-in, thereby rendering the unit ineligible for LIHTC credits, by not allowing the issue to be cured by adjusting the tier to the appropriate AMI.



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Beyond the impacts of this proposed regulatory change to LIHTC properties and their owners, HRI's biggest concern is the impact that such a policy will have on low-income households who are in desperate need of affordable housing. The creation of the Income Averaging election came about because policymakers realized that not every low-income household had an income conveniently just below the 60% AMI limit, but instead exhibited a broad range of incomes between 20 and 80% AMI. Similarly, once in affordable housing, households do not conveniently maintain their incomes at the same tier. Instead, household AMIs shift and change as tenants get promotions or lose jobs, or as working adults enter or exit the household. Why should a tenant at 80% AMI benefit from Income Averaging election while her neighbor at 85% AMI, but living in a 60% unit, is ejected from the same program and left to pay substantially higher market rents? In the Boston area, the difference in income between these hypothetical one-person households – the difference between staying in the LIHTC program- is currently only \$4,480. If average affordability for the property allows it, why not extend these protections to the 85% AMI household by re-designating her unit to an 80% tier as well? What is the value of subjecting such moderate-income tenants to unaffordable market rents when we can assist them at no additional cost? If the tenant's AMI continues to increase to the point where they are over-income for the 80% unit, at 112% AMI, then the unregulated market rent would be considered affordable to the tenant and the financial impact of losing LIHTC affordability protections would be minimal.

By permanently fixing the AMI designation of LIHTC units, this regulation ties the hands of owners and makes it impossible to provide rental relief to a household that experiences a drop in household income. Owners are unable to respond by lowering the household's AMI designation, offsetting the rental income loss by renting the next vacant affordable unit at a higher AMI tier, or increasing the designation of a household with mobile rental assistance if rental loss is not a concern. Instead, such households are forced to pay an unaffordable rent or be evicted for no reason other than regulatory rigidity. Likewise, households may grow and require a larger unit in the property but will not be allowed to move to a vacant, correctly sized unit at the property if that unit happens to be at a different AMI tier. What if a tenant becomes disabled and requires an ADA unit but the only available ADA unit is at a different AMI tier?

Finally, fixing AMI tiers results in properties that, over time, naturally accrue excess affordability that will be wasted. Consider two tenants in two Income Averaging units: Tenant A in a 40% AMI unit and Tenant B in an 80% AMI unit. Over time Tenant A sees a relative increase in income until they are making an income equivalent to 80% AMI yet continue to pay rent equivalent to 40% AMI. If Tenant B moves out, it would be ideal to move-in a new tenant at 40% AMI and re-designate Tenant A to an 80% unit, phasing in their rent increase until their rent returns to 30% of their new income. Instead, under this regulation we would be forced to move in another 80% tenant, resulting in a situation where a fortunate family in a 40% AMI unit pays a super-affordable rent that is only 15% of income while an actual 40% household waits in vain for an affordable unit. Allowing unit AMI tiers to track their tenants' AMI changes over time would make the LIHTC program more equitable and would not create artificial shortages of affordability.

We do not envy your position of creating regulations for the LIHTC program that attempt to address needs of the wide range of projects, tenants, and owners who participate in the program. Undoubtedly there are benefits to implementing the proposed regulation and permanently fixing the AMIs designated for particular units under the Income Averaging election. But we hope that this commentary has provided a compelling perspective from an affordable housing developer and LIHTC practitioner as to the pitfalls of such a regulation, which we believe will only increase, not decrease, confusion and undermine the affordability goals of the LIHTC program itself.