

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

Posted: 12/04/2020

ID: IRS-2020-0038-0014

Submitter Name: Kristi Clark

The proposed regulations present a couple of concerns,

Conflicts with the Federal Fair Housing Act:

The proposed regulations state that once a unit is designated, the unit's designation would be fixed and can never be changed. This presents a conflict in regards to Federal Fair Housing. For example, a household qualifies and moves into a 3rd floor 70% unit. During their residency however, the household needs a lower level due to medical reasons, and submits a reasonable accommodation request to transfer to a lower level apartment home. The household, however, does not qualify for any unit designation lower than 70% set aside. The only lower level apartment homes are units with fix set-asides 60% or lower. The household would not be allowed to move, resulting in a potential Fair Housing violation and liability.

Proposed regulations would make income averaging developments not worth the risk:

There is a huge need for more affordable housing and the income averaging set-asides have good intentions in filling this need for households whose incomes are under the Average Median Income.

The 2016 regulations already present tough challenges with extreme due diligence and care in regards to compliance from a management perspective; even more care and attention required than that of other LIHTC programs and properties.

These proposed regulations however, make the penalties of any non-compliance findings such a huge risk (disallowance/recapture of all tax credits, with no option of correction), that it makes the deal not worth doing. As a result, a developer would be better off developing a 40/60 or 20/50 LIHTC deal, or conventional property with high rents, defeating the purpose of what this program's original intentions were; more affordable housing.