



**OREGON HOUSING** *and*  
**COMMUNITY SERVICES**

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December 29, 2020

Internal Revenue Service  
Attn: CC:PA:LPD:PR (Reg-119890-18)  
Room 5203 P.O. Box 7604 Ben Franklin Station  
Washington, D.C. 20044

**RE: Comments on Reg-119890-18 Regarding Low Income Housing Tax Credit Average Income Test Regulations**

To Whom It May Concern,

Oregon Housing & Community Services (OHCS) serves as the Housing Finance Agency (HFA) for the State of Oregon. OHCS appreciates the opportunity to comment on the Internal Revenue Service (IRS) notice of proposed rulemaking to establish regulatory guidance on the Low Income Housing Tax Credit (Housing Credit) Average Income Test (AIT) minimum set-aside, including modifications of §1.42-15 for the Next Available Unit rule and development of a new regulation at §1.42-19 for the AIT.

As the HFA for the State of Oregon, OHCS is supportive of the Average Income minimum set-aside and share the opinion of many developers within the State that AI provides an important opportunity to spur development in rural communities and to utilize the LIHTC program for deeper affordability purposes expanding the usefulness of this extremely important development tool.

However, there are two primary elements of the proposed rulemaking that OHCS finds troubling. Of particular concern to OHCS is the following guidance found under ***Explanation of Provisions (1)(B)*** “...a taxpayer must designate the imputed income limitation of each unit taken into account under the average income test...”

The presumption is that AI units would not have the ability to float designations from one unit within a project to another. This has far reaching impacts ranging from regulatory inconsistencies with other programs (such as HOME) to VAWA and Fair Housing ramifications. OHCS strongly encourages this provision be revised to allow state HFA the flexibility to continue to float unit designations within projects provided the overall property average does not change.



OHCS does support the ability of HFA's to modify individual unit designations even if it changes the average in the property, so long as the average remains below 60 percent of AMI. But the concept of floating units is critical to utilization of the Average Income minimum set-aside as envisioned by OHCS.

Our second primary concern is that the proposed rule requires all low-income units in a project to average no more than 60 percent of area median income (AMI) as a condition of meeting the AIT minimum set-aside. Thus, even a single noncompliant unit could result in a violation of the minimum set-aside if the loss of that unit causes the overall average to go above 60 percent of AMI. This seems extreme if the property is meeting 40/60 already, particularly for 100% affordable units. OHCS believes the AIT minimum set-aside should be considered met so long as 40 percent of the units in the property have an average of 60 percent or less of AMI. In addition, the property should have to meet an overall Average Test of no more than 60 percent of AMI across all low-income units. If a unit is out of compliance causing the property-wide average to go above 60 percent of AMI, this should be considered noncompliance for that unit only, but not a violation of the minimum set-aside, so long as 40 percent of the units still meet the 60 percent average.

We firmly believe that, if made usable, the Average Income minimum set-aside can be an important tool to help the LIHTC program reach our rural communities and those in need of deeper affordability. Thank you for consideration of our comments.

Best regards,



Julie V. Cody  
Director of the Affordable Rental Housing Division  
Oregon Housing & Community Services

