THE PEABODY COMPANIES

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Via: Upload to Federal Rulemaking Portal

CC: PA:LPD:PR (REG-119880-18)
Room 5203
Internal Revenue Services
PO Box 7604
Ben Franklin Station
Washington, DC 20044
Attention: Sunita Lough, Deputy Commissioner for Services and Enforcement

RE: Comments on REG -119890-18: Section 42, Low Income Housing Credit Average Income Test Regulations

Dear Ms. Lough:

We are writing to you to submit comments in response to the Internal Revenue Service (IRS) notice of proposed rules (2020-20221, REG-119890-18: Section 42, LIHTC Average Income Test Regulations and appreciate the opportunity to provide our comments.

There are some significant benefits to the rule and we thank you for those changes, but the penalties for failure and lack of flexibility to react to changes in a resident's household income make the practice of income targeting impossible.

Peabody Properties is one of the largest affordable housing management companies in the Northeast with a portfolio in excess of 13,000+ units. For this reason, we are writing from not only the perspective of our owners whom we manage these developments for, but our residents whose lives can be significantly impacted by these rules and in some instances result in family displacement. Our comments are as follows:

1. **Initial designation and Over Income Units.**

The rule states that once designated the unit percentages are tied to the particular unit; it cannot be changed. Then the question becomes what happens to the mother and child when the mother lost her job and was living in an 80% designated unit and paying the designated rent for that unit type, and can't afford the rent any longer, we don't have the flexibility of switching that unit designation with the other resident who graduated from job training and now has a great job but is over the 30% of AMI that they originally moved in to? Now both units are out of compliance. And because the person that is now eligible for the 30% category can't be switched from her unit designation of 80% and still has to pay the 80% rent, they end up being displaced due to nonpayment of rent. We recommend there be only one test for the property

and that is that it maintains it 60% Average for all units and not have the unit designation second tier test.

What if there are no units to offer an over income tenant? If the income of a tenant in one of the designated units goes above the limitation, i.e., it becomes an "over income unit," then a modified next available unit rule applies; this rule does not allow for families to improve their lives and having the flexibility of maintaining the 60% Average would be much easier without permanent unit designations.

2. **Nonqualifying units.** If one of the designated units no longer qualifies a low-income unit—for example, because it becomes uninhabitable due to a fire; now the decision is how do you mitigate the situations. The final regulations should remove the wording that requires a reduction in the applicable fraction for the compliance units that are removed for purposes of calculating the annual tax credit. This change
3. **Timeframe for Correcting Non-Compliance:** the 60 Day correction period is too short and unless the unit designation requirement second test is removed almost impossible to achieve if no units turnover in the development within that timeframe.
4. **Grandfathering**. Because the proposed rule still has unanswered questions, we ask the IRS to consider grandfathering in owners who elected the Income Averaging and are still working with state agencies on the interpretations of how the rule should be applied once finalized. For example, an owner had an existing property with an original 40/60 deal and now with the acquisition rehab /sale of the property retains the original residents whose income have since changed since designated. Not fully understanding the rules, consideration should be made for these properties until such time as the IRS provides more permanent guidance and details.

The guidance that has been provided reduces the benefit and flexibility of the new set aside to owners and by extension the residents living in their communities. The proposed rule has the ability to provide a diverse economic community and could significantly benefit affordable housing development but the restrictions and penalties of the proposed regulations will discourage owners(taxpayers) from using the new set aside. In addition, we as Property Managers would seriously consider whether the risk of managing these properties makes sense with the serve penalties of noncompliance in this rule.

Thank you in advance for your time and consideration in considering our comments above.

Sincerely
Peabody Properties, Inc.

By:
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V.P. Administration

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Melissa Fish Crane
Principal and COO

By:
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By:
Tamme Polson
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