

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

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I am asking the IRS not to adopt the changes proposed in this regulation. I am the Director of Compliance for a management company that manages primarily LIHTC properties. I am also on the Board of Directors for our local AHMA, and work with our members regularly on best practices in our industry. The changes proposed in this rule would be very detrimental to the day-to-day operations and management of compliance for properties who have elected the Average Income minimum set-aside. Specifically, not being able to swap set-aside designations could result in fair housing violations. For example, Mary lives in an 80% 3rd story unit, but needs to transfer to a 1st floor unit because of her disability. We have no units on the 1st floor designated at 80% AMI so the transfer must be denied. This is a direct violation of fair housing. The rule could also negatively impact a property's financial stability by forcing an owner to keep a unit vacant until an eligible household applies, or renting a higher set-aside unit to someone who qualifies at a lower set-aside. If we later had an applicant who qualified for the higher set-aside, we would have to deny their application because we cannot swap the designations with the unit occupied by the lower income household. Finally, it appears that non-compliance with AI, under the proposed regs, would result in a loss of tax credits and recapture for the entire building instead of just the non-compliant unit. As practitioners, allowing the set-asides to "float" is the best way to utilize this tool that the IRS has given us to help a broader spectrum of low-income individuals and families. With these proposed regulations, I see fewer and fewer developers and owners choosing the Average Income minimum set-aside, thus limiting those that qualify for affordable housing.