



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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December 28, 2020

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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 PROPOSED REGULATIONS ON AVERAGE INCOME TEST REGULATION

To Whom It May Concern:

Texas Department of Housing and Community Affairs (TDHCA or the Department) generally supports the National Council of State Housing Agencies (NCSHA) letter and comments on this matter. Additionally, TDHCA submits the following comments for your consideration.

TDHCA Comment on Average Income Minimum Set-Aside: TDHCA encourages the Internal Revenue Service (IRS) to consider the Average Income Minimum Set-Aside be met so long as 40 percent of the units in the project have an average of 60 percent or less AMGI. In addition, the development should be required to have and maintain an overall average of no more than 60 percent AMGI across all low-income units. If a unit or units are out of compliance causing the project average to go above 60 percent of AMGI, this should be considered unit noncompliance and not a violation of the minimum set-aside as long as 40 percent of the units still meet the 60 percent average. This would be consistent treatment with the other two minimum set-asides 20/50 or 40/60. This would also eliminate the need for owners to take mitigating actions if the Average Income Minimum Set-Aside was treated consistently with the other minimum set-aside options.

TDHCA Comment on Unit Designations: TDHCA urges the IRS to allow owners to modify unit designations throughout the affordability period, as long as the state Agency allows the change in its policies and the State Agency consents to the change. Unit designation changes should always be



allowed if needed to comply with Federal Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, the Violence Against Women Reauthorization of 2013, or any other federal statute or regulation. Unit designations changes have always been allowed to accommodate household transfers, next available unit rule and when a household's income increase above current designation. TDHCA encourages the IRS to continue to allow flexibility with unit designations to be treated consistently with the other minimum set-aside options.

Thank you for the opportunity to provide comments.

Sincerely,

A handwritten signature in blue ink that reads "R D Wil II". The signature is written in a cursive style with a double underline at the end.

Bobby Wilkinson
Executive Director