

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

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Submitter Name: Virginia Pace

Hi, I am an affordable housing consultant and developer and have several average income deals in development. We are excited to extend low income restricted units to residents generally making between 30% - 80% AMI. This is particularly helpful in trying to get LIHTC family housing accepted in higher income areas.

In the review of the initial regulations, I have the following comments/ ideas:

1. Fixing the income designation to specific units is unnecessarily onerous and counterproductive to offering housing options. There are several situation where it would be helpful to allow the income designations of the units to float and just be counted at year end. Some of the reasons include: (a) resident's income increases above 140% of the allowable income designation. The resident may have to physically move to another unit. (b) resident needs a reasonable accommodation to live in an appropriate unit (accessibility features or other need) and because that available unit is not at the resident's AMI level, the project owner would have to decide between meeting fair housing requirements and LIHTC recapture. (c) A proposed resident wants an accessible unit, but the accessible unit is at a lower AMI level than they have, so would be denied needed housing. Then that accessible unit may have to be rented to a non-disabled resident at the appropriate income level, clearly not serving the project's intentions. If the income averaging is met at the end of each year, regardless of which units in the project are used, should be sufficient. States have proven very effective at completing these compliance measures.

2. Recapture should be limited to only those LIHTC units out of service, even if the remaining units puts the project average above 60% AMI. Congress' intent was to expand LIHTC housing to households earning up to 80% AMI. The proposed rule in effect makes it likely to lose LIHTCs on at least 2 units when only 1 is out of compliance and is a disincentive to trying to build Income-Averaging projects.

Thank you.