

WATERMARK DEVELOPER, LLC

December 15, 2020

Via Upload to Federal Rulemaking Portal

CC:PA:LPD:PR (REG 119890-18)
Room 5203
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044
Attention: Sunita Lough, Depute Commissioner for Services and Enforcement

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

Dear Ms. Lough:

Watermark Developer is currently constructing a 200-unit multi-family housing development in Auburn, WA. We are very concerned about the guidance the IRS has provided regarding the average income set-aside under Section 42 of the Internal Revenue Code.

While we have elected income averaging, we will likely, in practice, revert to the fixed 60% AMI standard, as the proposed regulations subject us to potential tax credit concerns by suggesting a fatal "cliff" test and unreasonable mitigating options. There too much risk to permit a developer like us to utilize income averaging. Our suggestions are as follows:

1. Final regulations should not include a reduction in the applicable fraction for compliant units that are "removed" for purposes of calculating the annual tax credit. The consequence of non-compliance or units not being suitable for occupancy should be a reduction of the applicable fraction only for the units which are non-compliant or are not suitable for occupancy as of the taxpayer's year-end.
2. Final regulations should implement the "alternative mitigating action approach" described in II-H of the Explanation of Provisions. It is not uncommon for a unit with, say, a 60% imputed income designation to be occupied by a tenant with an AMI of under 40%. By allowing this unit's designation to be changed to 40%, as permitted by the alternative mitigating action approach, it would prevent non-compliance and associated recapture.
3. Final regulations should allow the opportunity to take mitigating action to be taken up to 90 days following the discovery of the issue causing the failure of the minimum set-aside test.

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Bellevue, WA 98009
(425) 453-9556



We encourage your consideration of our comments.

Regards,

A handwritten signature in black ink, consisting of a stylized 'P' followed by 'G. Nored'.

Philip G. Nored
Managing Member