



ASSISTANT SECRETARY
FOR LEGISLATIVE AFFAIRS

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

June 6, 2022

The Honorable Michael F. Bennet
United States Senate
Washington, DC 20510

Dear Senator Bennet:

Thank you for your letter of May 26, 2022, regarding the average income test enacted in 2018. The average income test provides an additional set-aside criterion that a taxpayer may elect in order for the taxpayer's construction or rehabilitation of multifamily rental housing to earn low-income housing credits (LIHTCs). *See* 26 U.S.C. § 42(g)(1)(C).

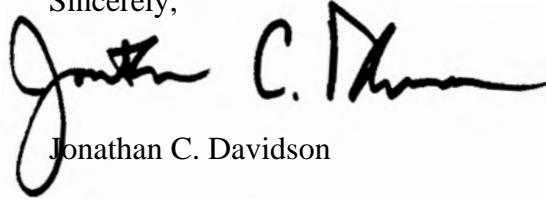
When Congress passed that legislation, stakeholders reasonably expected that the new set-aside would significantly improve the operation of the LIHTC tax incentive. Not only would the average income test allow more economically diverse tenant populations in LIHTC buildings, but it would make LIHTC-supported buildings more financially feasible in sparsely populated rural areas. This Administration not only has underscored the general importance of expanding access to quality, affordable housing but is particularly committed to enabling the average income test to achieve those goals.

As you know, the Treasury Department and the Internal Revenue Service issued a Notice of Proposed Rulemaking (NPRM) on October 30, 2020, seeking comment on a proposal to implement the average income test. We encouraged the public to submit comments in response to this NPRM. The Treasury Department and the IRS will fully consider feedback provided during the public comment period before finalizing any rule. The text of the NPRM is available here:

<https://www.federalregister.gov/documents/2020/10/30/2020-20221/section-42-low-income-housing-credit-average-income-test-regulations>.

If you have further questions, please direct your staff to contact the Office of Legislative Affairs.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan C. Davidson". The signature is fluid and cursive, with the first name "Jonathan" written in a large, looping script, followed by "C." and "Davidson" in a similar but slightly smaller style.

Jonathan C. Davidson

cc: The Honorable Todd Young
The Honorable Rob Portman
The Honorable Ron Wyden
The Honorable Mike Crapo
The Honorable Suzan DelBene
The Honorable Jackie Walorski
The Honorable Donald S. Beyer, Jr.
The Honorable Richard E. Neal