

October 2022

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Treasury Issues Final Guidance on Low-Income Housing Tax Credit Income Averaging Rule; IRS Further Extends Credit Deadlines

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On October 7, 2022, Treasury issued [final and temporary regulations](#) on the income averaging rules for the low-income housing tax credit ("LIHTC") under Section 42 of the U.S. Internal Revenue Code of 1986, as amended (the "Code"), and the IRS issued [IRS Notice 2022-52](#) to extend relief in [IRS Notice 2022-05](#) for certain LIHTC deadlines. This taxpayer-friendly guidance should provide greater certainty and flexibility to LIHTC developers and project owners.¹

Average Income Test Final and Temporary Regulations

Under Code Section 42, a project qualifying for LIHTCs must satisfy a minimum set-aside test, which relates to the income of tenants occupying LIHTC units. Before the Consolidated Appropriations Act of 2018, there were two minimum set-aside tests that a taxpayer could elect: the 20-50 test and the 40-60 test. The Consolidated Appropriations Act of 2018 added the average income test as a third minimum set-aside test. Under the average income test, a project meets the minimum requirements of the average income test if 40% or more of the units in the project are both rent-restricted and occupied by tenants whose income does not exceed the imputed income limitation designated by the taxpayer with respect to that unit. The average of these designated imputed income limitations (which must be 20, 30, 40, 50, 60, 70, or 80 percent of area median gross income ("AMGI")) may not exceed 60% of AMGI.

The final regulations clarify the requirements a project must satisfy to meet the average income test, providing more flexibility for project owners than had been available under the proposed regulations issued in 2020. For example, under the 2020 proposed regulations, when a single unit failed to maintain its low-income status and without that unit's designation, the average income of the remaining units in the project exceeded 60% of AMGI, the project would fail the average income test. The final regulations have discarded this so-called "cliff test," instead providing that a project may satisfy the average income test if at least 40% of the units in a project are eligible low-income units and have been designated in a manner that collectively average 60% or less of AMGI. They also permit unit redesignations under a wider range of justifications than had been accepted under the prior proposed regulations.

The issued guidance also include temporary regulations, which provide recordkeeping and reporting requirements required for the administration of and compliance with the final regulations.

These taxpayer-friendly regulations should provide more certainty to LIHTC developers and project owners seeking to create more financially stable, mixed-income LIHTC projects.

IRS Notice 2022-52

IRS Notice 2022-52 extends relief announced earlier this year in IRS Notice 2022-05, further relaxing certain requirements for LIHTC qualification and compliance.

Extended Deadlines for Time-Sensitive Actions

The IRS has extended the following deadlines:

<i>Applicable Requirement</i>	<i>Original Deadline (without regard to prior extensions)</i>	<i>Extended Deadline Under Notice 2022-52</i>
Placement in service of the low-income building	12/31/2020	12/31/2022
	12/31/2021, with original deadline for 10% test before 4/1/2020	12/31/2023
	12/31/2021, with original deadline for 10% test on or after 4/1/2020	12/31/2023
	12/31/2022	12/31/2024
	12/31/2023	12/31/2024
Reasonable period for restoration or replacement in the event of casualty loss	On or after 4/1/2020	Earlier of (a) original deadline plus 24 months and (b) 12/31/2023
Correction period	On or after 4/1/2020 & before 12/31/2022	Earlier of (a) original deadline plus 1 year and (b) 12/31/2023

Extended Relief for Compliance Monitoring

An agency allocating LIHTCs required to conduct physical inspections may extend the waiver of the physical inspection requirement (previously extended by IRS Notice through June 30, 2022) if, consistent with state and local health and safety recommendations, the level of COVID-19 transmission makes an extension appropriate. No extension may go beyond December 31, 2023.

This extended relief should help to alleviate some of the delays and disruptions that many LIHTC developers and project owners have faced as a result of recent public health, economic, and supply-chain issues.

The White House included both the regulations and the IRS Notice as part of an [announcement](#) of the current administration’s progress on implementing its Housing Supply Action Plan, which aims to introduce policies that increase the supply of affordable housing.



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