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Navigating Average Income Compliance: Seven Years of Progress

by Missy Covington
Raymond James Affordable Housing Investments

For those of us deeply embedded in the world of compliance, the evolution of average income has been fascinating to watch. When it first emerged in March 2018, it sparked extensive industry discussions as we grappled with the implications. As compliance professionals, we understand the importance of clear guidance, and in October 2020, the IRS provided proposed regulations—an initial step, but one that left many questions unanswered. The final guidance issued in October 2022 was a turning point, resolving key concerns like the “cliff test” risk by allowing five instances for unit designation changes within a tax year. However, the responsibility for changes outside of the tax year was left to state housing finance agencies (HFAs), meaning compliance strategies now vary widely across jurisdictions.

The Role of Compliance in Managing Uncertainty

Navigating compliance in a landscape of evolving regulations has required adaptability. Investors, syndicators, and affordable housing professionals have had to devise strategies to mitigate risks—chief among them, the concept of cushion or buffer units. Originally conceived as a safeguard against non-compliance, buffer units provide a margin of error to ensure a project’s average income remains below the crucial 60% threshold. While some view this practice with skepticism, others recognize its value in ensuring stability and investor confidence.

A review of RJAHI’s (Raymond James Affordable Housing Investments) portfolio illustrates this dynamic. Across 140 average income projects spanning 24 states, 89.3% maintain at least one cushion unit. Even as final IRS guidance has clarified many concerns, buffer units remain prevalent, with 86.8% of operational projects maintaining them. This persistence suggests that, despite regulatory progress, compliance professionals and investors alike continue to see their merit in mitigating risk.

State-Level Compliance Considerations

A critical aspect of managing average income projects is understanding the varying policies of state HFAs. Some states have embraced flexibility, allowing designation changes beyond the tax year, thus reducing the need for cushion units. Others have yet to implement clear policies, leaving investors and syndicators to take a conservative approach. This divergence underscores the importance of compliance expertise—professionals who can interpret and adapt to state-specific requirements ensure that projects remain viable while maximizing LIHTC benefits.

Interestingly, while RJAHI's analysis shows widespread use of cushion units, not all of them are investor-driven. Smaller cushions—typically five units or fewer—are often investor requirements. Larger cushions, however, can result from the requirements of additional funding sources mandating lower-income unit designations. With some projects maintaining buffers of up to 77 units, it's evident that compliance considerations extend beyond investor preferences.

Looking Ahead: The Future of Average Income Compliance

What will the next seven years bring for average income? Compliance professionals will continue refining strategies as regulations evolve. While some anticipated average income would become the default minimum set-aside election, that remains uncertain. What is clear, however, is the ongoing importance of industry expertise in ensuring that projects comply with shifting federal and state requirements, while maintaining financial stability and investor confidence.

For those of us who thrive in the world of compliance, the past seven years have been a testament to our ability to adapt, advocate, and ensure that LIHTC properties remain viable. Whether cushion units are here to stay or will fade as policies solidify, compliance will remain at the heart of every successful project.