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The Guru Is In

Neither Fair, Nor Market, Nor Rent

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Names can outlive their purpose and their original meaning. Though the Holy Roman Empire was neither holy, nor Roman, nor an empire, a cluster of mutually distrustful principalities with a largely symbolic head of state known as the Holy Roman Emperor maneuvered under that rubric for a thousand years after its 800 AD founding by Charlemagne before it was put to sleep by the 1815 Congress of Vienna. Such may yet be the fate of two venerable concepts, Fair Market Rent (FMR) and the Area Median Income (AMI).

In late March, the Department of Housing and Urban Development made national news with an announcement out of nowhere that “under new regulations to be announced Monday, yearly rent increases [for Low Income Housing Tax Credit properties] will be capped at ten percent.”

“They can’t do that!” I instantly said … and then went off to check.

After digging into it for many hours I resurfaced, chagrined that I’d been oblivious to what had been done under our collective noses. This latest theft of meaning was merely the logical conclusion of 15 years’ worth of shortsighted tweaking, jury-rigging, finagling and results-engineering not for principle or long-term value but only for short-term results, painting the patina of legitimacy over the conquest of policy by politics.

As explained in a Jan. 10, 2024 *Federal Register* notice when HUD slid the concept into the public arena, the first step on this downward road paved with good intentions came in 2009, when HUD arbitrarily capped the amount income limits for an area could go up or down. As justification, the notice offered some epic word salad rationalization leading to, “By limiting increases in income limits, HUD decreases the burden on low-income households who may face large rent increases resulting from higher income limits.”

Deciding to torque a statutory concept (AMI) to engineer an outcome (lower rents) for an already-lucky subset of the population (people currently living in LIHTC apartments) was bad enough. Worse still was stacking this latest shenanigan atop the Jenga tower of *six* different ways HUD had *already* distorted AMI. To take the first example in HUD’s FY 2023 guidance, on the subject of Very Low-income Limits, HUD listed its basic method and the five additional gimmicks and reported, for 2,603 metro and non-metro markets, how many times each was used:

1. *Use 50 percent of local median family income.* The normal person's approach, unmanipulated. Eight percent of cases.
2. *Use state non-metropolitan median income.* Five percent of cases.
3. *Increase limits based on ability to afford local rents.* You read that right: to align with local rents, reverse-engineer an imputed median income. This makes zero policy sense. One percent of the cases.
4. *Decrease limits to another reverse-engineered formula with different knobs.* Zero percent of the FY 2023 cases. Praise be for small graces.
5. *Prevent year-on-year decreases greater than five percent.* Cushion LIHTC property owners against the downside always inherent in the system. One percent of cases.
6. *Cap localized year-on-year increases* if they are more than twice the increase in *national* median income. This most recent metric helps the good people of (say) Washington, DC keep their income limits (and hence their rents) lower than their local incomes rose, by completely illogical averaging of them with the fine Midwestern folks whose incomes aren't rising as fast.

A whopping *86 percent of the cases*.

HUD's detailed exposition of methodological reverse-engineering for other situations goes on for a dozen pages, but by then the dent in my forehead from banging it on my desk prevented me from concentrating.

There was more. In its notice proposing the ten percent cap, HUD shamelessly asked this question:

In its calculation of income limits, HUD may adjust income limits away from the legislatively defined percentages of AMI for places with high and low housing costs relative to AMI, or where incomes are otherwise unusually high or low. What other criteria, if any, should HUD use when considering whether to make such adjustments in addition to those in existing policy? For example, should there be a national minimum income limit to reflect a minimum rent needed to operate and maintain rental housing in the lowest-cost housing markets? Should the same criteria be used in United States territories?

This turns LIHTC entirely on its head. AMI is an *affordability* metric that can be tracked by Treasury and applied algorithmically by the market. Property feasibility is a *cost* metric that requires property-by-property oversight. LIHTC was designed to be a non-HUD program, where there were formula-based rents that people paid. It self-adjusted based on changes in *actual* median income, not in some transmogrified caricature of AMI. Thirty-eight years after LIHTC's enactment, that principle has not only been thrown overboard it has also been expunged, and

HUD is now adjudicating viability for properties it didn't finance, doesn't regulate and doesn't subsidize.

Fifty years ago, the great management sage Robert Townsend wrote, "No accounting system is very good, and all of them are infinitely variable." The same can be said of rent-setting mechanisms. He went on, "In a profit squeeze, management will come up with creative reasons for changing the accounting system. They may even call on the outside accounts for support: 'Isn't this better?' 'Yes, that's better.' But the point is: is it a change? If it is, *don't let them make it.*"

Once the regulation-writers are unmoored from the principle that words should mean what they were written to mean and are plainly understood to mean always, and have instead set your course to interpret the words to produce the politically appealing outcome, when do you stop? HUD has no idea:

Should income limits consider direct measures of costs, such as wages or insurance, instead of, or in addition to, its high housing cost adjustment, recognizing that HUD may currently lack the statutory authority to do so? If so, which specific costs should HUD consider, and which measurements or data would you recommend as a reference?

Names that outlive their meaning become agents of deception. Rather than call it AMI, just rename it the What HUD Feels Like index and publish annual WHFLs for every Metropolitan Statistical Area in America.

But in all this deception, there is a bright spot of reality. Today, even with real inflation higher than the Consumer Price Index figures, few if any properties will hit the ten percent cap.

Is this announcement cavalier disregard for consistency, or cynical insubstantial vaporware? As Deion Sanders once said to Jerry Jones, "Both."