Housing Tax Credit Average Income Guidance

The Consolidated Appropriations Act of 2018 (the Act) established an Average Income Test (AIT) as a third minimum set-aside election for new Housing Tax Credit (HTC) projects. To meet the AIT, a minimum of 40% of the residential units must be both rent restricted and occupied by individuals whose imputed income average at initial occupancy is at or below the 60% Multifamily Tax Subsidy Project (MTSP) income limit, adjusted for family size. The set-aside allows projects to restrict a percentage of units at higher rent and income levels by agreeing to restrict a percentage of its units at lower rent and income levels. The allowable income and rent limit restrictions are the 20%, 30%, 40%, 50%, 60%, 70% and 80% MTSP limits.

As of the 2022-2023 HTC Qualified Allocation Plan (QAP), Minnesota Housing requires properties to be 100% HTC restricted to be eligible to elect the AIT. The owner must agree to and make a proper election per IRS instructions to treat all buildings as one multiple building project.

If the AIT is elected, the owner also agrees to maintain the number of 20%, 30% and 40% units throughout the extended use period that it represented it its application. The required number of units will be set forth in the LURA and cannot be changed without Minnesota Housing's prior written approval. The units may float throughout the property, but the owner should be aware of potential fair housing concerns if the lower income and rent restrictions are not available in units with larger bedroom sizes.

Projects must meet all requirements of non-HTC funding sources and projects funded with tax-exempt volume limited bonds should ensure the development satisfies the minimum set-aside requirements as the AIT election is not available for tax-exempt bond purposes. Owners are responsible for satisfying the requirements of Section 42 and Section 142 of the Internal Revenue Code and should seek advice from appropriate legal and tax professionals to ensure a project can successfully use AIT. Projects re-syndicating with an existing LURA will need to comply with both AIT and the original minimum set-aside.

Minnesota Housing will accept proposals for the use of AIT for new 9% and 4% HTC projects and for 9% and 4% projects already approved by Minnesota Housing in prior funding rounds subject to the requirements outlined below. The minimum set-aside cannot be changed without Minnesota Housing's prior written approval. Requests will generally be processed within 60 days and owners should plan accordingly. If additional processing time is needed for underwriting purposes, Minnesota Housing will communicate any change in timeframe with the applicant.

Election Process

At Application:

Projects that wish to elect AIT should select the set-aside on the HTC Info tab of the Multifamily workbook at the time of application. Applicants will be required to submit the AIT Income and Rent Grid.

Post Selection:

Previously selected projects may seek Minnesota Housing's approval to change the set-aside to AIT. The project must meet the following parameters:

General Requirements:

- Project status
  - The IRS Form 8609 has not been filed with the IRS.
  - Approval may be subject to the status of the project including but not limited: board approval, funding commitment or closing, placed in service date, starting the lease-up process, or recording the LURA.
- There will be no increase in 9% HTC amount.
- There will no increase in Minnesota Housing's deferred loan amount.
- There will be no change in deferred and/or HTC selection criteria for projects with a Minnesota Housing deferred loan or 9% HTCs.
- 4% HTC Only projects must continue to meet minimum scoring requirements.
- Changes to the rent and income tiers may be permitted, subject to adequate supporting documentation, satisfactory underwriting of the project, and compliance with the requirements of existing Minnesota Housing financing. Developments that are re-underwritten may need to go back to the Minnesota Housing Board to seek approval and owners should understand that will require additional time.
- HTC projects with a LMIR Loan may be permitted to change the set-aside to AIT, subject to Minnesota Housing approval, if the project has not yet received Minnesota Housing Board approval to enter into a loan commitment.
- Developments must comply with the requirements of any Minnesota Housing financing.

Required Documentation:

- A written request to change the set-aside. The request must include an explanation for requesting the change, discuss the impact on the selection criteria and include any modifications to rent and income limits for the project.
- Updated information on the rent and income tiers on the AIT Income and Rent Grid.
- Complete Minnesota Housing's AIT Certification Form.
- Additional Market Study guidance:
  - There are additional requirements in Chapter 2.10 of the HTC Market Study Guidelines if the owner is electing AIT and should be incorporated into the Market Study submitted to the agency.
    - If a Market Study was previously submitted and the project intends to change rent or incomes as underwritten at the time of selection, provide a

supplement to the original Market Study that accounts for the modifications.
    - If the project is not proposing any changes to the rent or income tiers, from what was designated at the time of selection, no updates to the Market Study are required.
- An updated Multifamily Workbook that reflects the modified set-aside and includes any changes to the rents or incomes from what was designated at the time of selection.
- Syndicator/Investor letter of approval referencing the specific rent and income tiers may be required.
- Permanent lender(s) letter of approval referencing the specific rent and income tiers may be required.
- Bond issuer letter of approval referencing the specific rent and income tiers may be required. If Minnesota Housing is the bond issuer, Minnesota Housing approval may be required, and requests will be considered on a case-by-case basis.

Contact

For more general information, please contact Kelly Winter at 651.297.5142 or kelly.winter@state.mn.us. For previously selected projects, contact your assigned underwriter.

This guidance is subject to change at any time by Minnesota Housing.