

## **AVERAGE INCOME TARGETING (AIT)**

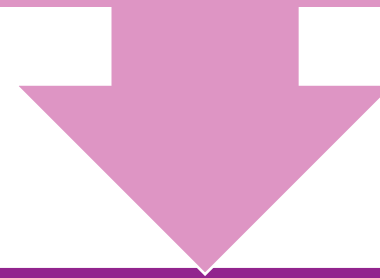
SHANNON NARDINELLI – CTCAC SECTION CHIEF – COMPLIANCE

ELIZABETH GUTIERREZ-RAMOS – CTCAC SECTION CHIEF – COMPLIANCE

46<sup>th</sup> Annual AHMA-PSW Conference & Expo  
May 21 – 23, 2023

# AVERAGE INCOME TEST (AIT)

On October 7, 2022, the IRS released the Section 42, Low Income Housing Average Income Test Regulations. These regulations constitute the final guidance from the IRS for the Average Income Test (AIT) set-aside for low-income housing



CTCAC will adhere to the final guidance and will continue to require more restrictive standards (*as allowed for in the final regulation*) on some aspects as currently noted in the current State Regulations

# AVERAGE INCOME TEST (AIT)

**Background:** In 2018, Congress enacted the Consolidated Appropriations Act of 2018, which added a third minimum set-aside of Average Income Test (AIT) to the existing 40/60 and 20/50 set-asides

- The AIT allows for unit income ranges between 20% - 80% of AMI if the overall average of the units at the property does not exceed 60% of AMI
- CTCAC released guidance in March of 2018 and written into the State QAP effective May 16, 2018, that projects electing the AIT set-aside must adhere to a deeper targeted requirement

# AVERAGE INCOME TEST (AIT)

- For projects seeking a competitive allocation of credits (9%) – the overall average of the project may not exceed 50% of AMI, rather than the 60% allowed in the federal legislation.
  - This requirement keeps reporting requirements consistent at the State level with those competitive projects that choose a 40/60 or 20/50 set-aside
- For projects seeking a non-competitive allocation of credits (4%) - the overall average of the project may not exceed 59% of AMI, rather than the 60% allowed in the federal legislation
  - In 2020, this State regulation was modified to the IRS requirement of 60%

# AVERAGE INCOME TEST (AIT)

## **Final Regulation Guidance:** Minimum Requirements of the Average Income Test (AIT) set-aside

- Project meets the minimum requirement of AIT if 40% or more of the residential units in the project are both rent restricted and occupied by tenants whose income does not exceed an average of 60% of Area Median Gross Income (AMGI)
- Units may be designated at 20%, 30%, 40%, 50%, 60%, 70%, or 80% of AMGI
- Irrevocable Election
  - Under Section 42(g), once a taxpayer elects a set-aside, the election is irrevocable. If a taxpayer previously elected to use a 20/50 or 40/60 set-aside, they may not subsequently elect to use AIT

# AVERAGE INCOME TEST (AIT)

**Designated Units:** Section 42(g)(1)(C)(ii)(I) requires the taxpayer to designate each unit's imputed income limitation to determine the overall average of the property. The final regulation revises the timing of the designation from the end of the 1st year of the credit period to when a unit is first occupied as a low-income unit

- The IRS Final guidance does provide guidance for changing unit designations under certain circumstances:
  1. In accordance with any procedures established by the IRS in forms, instructions, or published guidance
  2. In accordance with an Agency's (CTCAC's) publicly available written procedures available to all AIT projects

# AVERAGE INCOME TEST (AIT)

3. To enhance protections of ADA, Fair Housing, VAWA, or any other State, Federal, or local law or program that protects tenants and that is identified by either the IRS or Agency (CTCAC)
  - These protections do not necessarily have to have a specific connection to Section 42
4. To allow an existing qualified resident to transfer to a different unit within the project and keep the same income limitation and gross rent
5. To restore the required average income limitation to identify the qualified group used in conjunction with satisfying the minimum set-aside or applicable fraction

# AVERAGE INCOME TEST (AIT)

**Designated Units:** Once the units are recorded in the Regulatory Agreement, CTCAC will not allow the changing of the unit designations

- Units designations are not tied to the unit number and may “float” as needed across the property
  - Units Swap Status
  - Similar to State Deeper Targeting
- The total number of units designated on the Reg Agreement must remain the same through the 55-year Compliance period



# AVERAGE INCOME TEST (AIT)

- It is crucial that owners and management agents work closely together in deciding how units will be designated for Average Income purposes
- On-site management must be **extra** careful in transferring any units or moving in new households to ensure that any changes will maintain the AIT designation

# AVERAGE INCOME TEST (AIT)

CTCAC will require that the initial designations determined at Placed in Service and noted in the Regulatory Agreement for the property, remain throughout the full 55 year compliance period.

Owners may swap the status of units as needed and described above, but the number of units designated at each of the percentages (20% - 80%) must remain as noted in the Regulatory Agreement

# AVERAGE INCOME TEST (AIT)

**Next Available Unit Rule (NAUR):** For AIT units that are designated at 20% - 60%, the NAUR determination is calculated at 140% of the current 60% AMGI

For AIT units that are designated at 70% or 80%, the calculation is based on 140% of the current AMGI for that designation

- The NAUR states that if an existing tax credit household exceeds the current AMGI by 140% or more, then the next unit of equal or smaller size must be rented to a qualified household

# AVERAGE INCOME TEST (AIT)

- For AIT projects, the taxpayer must limit the designation on the next unit in a way that will not cause the average of the project to exceed 60% of AMGI
- In the case of AIT projects with multiple units exceeding the 140%, the IRS clarified that there is not a specific order in which units must be occupied, however, the order in which the groups are occupied may affect the qualified group used for determining the applicable fraction

# AVERAGE INCOME TEST (AIT)

**Applicable Fraction:** Under the final regulations, the group of units used to determine the applicable fraction follows the same approach as determining the AIT set-aside

- If a unit designated at a higher percentage causes the average of an otherwise qualified group to exceed 60% of AMGI, that unit must be excluded from the applicable fraction calculation
- If a unit loses low-income status, it may impact the other units within the group, and the taxpayer may have to exclude one or more additional units to retain an average that does not exceed 60% of AMGI

# AVERAGE INCOME TEST (AIT)

- Additionally, the final regulations require that the taxpayer separately identify the units used to satisfy the AIT set-aside and the qualified group of units noted for determining the applicable fraction
  - These can, but do not have to, be the same units
- The units should be documented in the taxpayer's books and records and communicated to CTCAC annually

# AVERAGE INCOME TEST (AIT)

**Required Reporting:** Taxpayers are required to report specific information to CTCAC and maintain detailed records establishing the accuracy of the project's set-aside, applicable fraction, and compliance with Section 42 regulations

- Currently CTCAC requires the Annual Owner Certification package be completed by March for the previous year
  - Starting in 2023, CTCAC will be adding an additional informational report for projects that have elected an AIT set-aside to comply with the tracking requirements of the IRS final regulations

# AVERAGE INCOME TEST (AIT)

**Applicability Date:** The final regulations apply to taxable years beginning after December 31, 2022

- For taxable years prior to the implementation of the final regulations, taxpayers may rely on the interpretation of the Statute by the allocating agency (CTCAC) for those years to which the regulations did not apply



# AVERAGE INCOME TEST (AIT)

**Compliance Monitoring:** There is a separate Project Status Report (PSR) for AIT projects

- This PSR will be used only for projects whose owners elected the AIT Federal minimum set-aside election (MSA)
- Projects whose owners have elected the regular 20/50 or 40/60 MSA's will continue to use the regular PSR found on our website

Income and Rent tables from 2018+, include a breakdown for the 20-80% designations

# AVERAGE INCOME TEST (AIT)

- Other than requiring those projects with the AIT to complete and submit the 2<sup>nd</sup> PSR all other compliance monitoring will be done **exactly the same** as with other tax credit projects that elect the 20/50 or 40/60 Federally Elected Minimum Set-asides
- All regular compliance policies and procedures and required forms also apply
- All regular reporting required of all other tax credit projects applies to AIT projects
  - AOC, POP, AOE, Tenant Demographic Data, requests for Part II of the Form 8609's completed that were sent to IRS

# AVERAGE INCOME TEST (AIT)

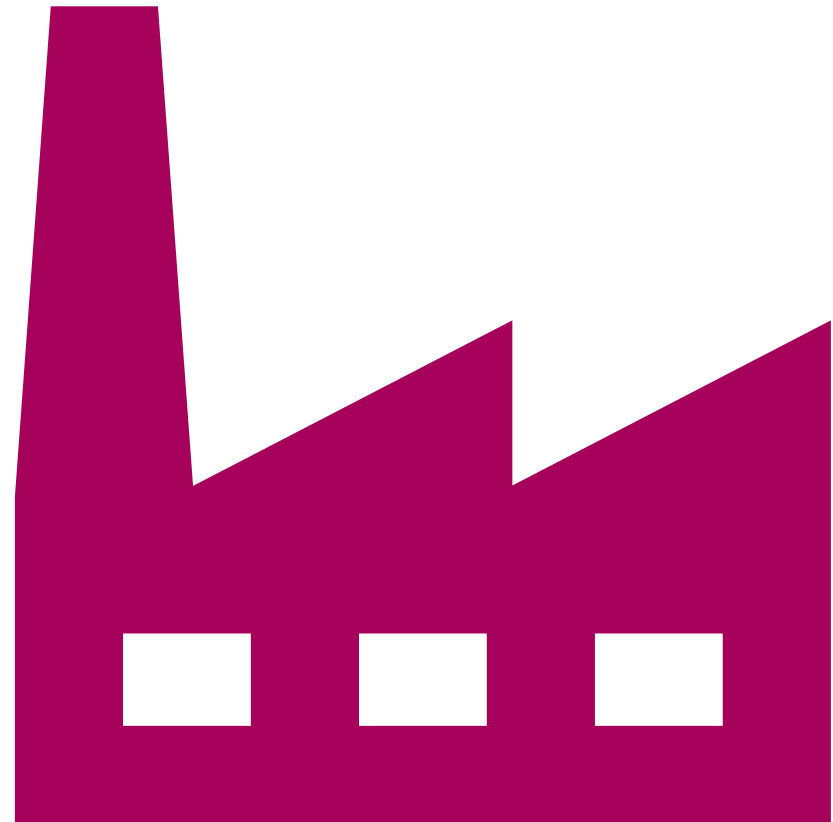
- Our Compliance staff will continue to look for income and rent eligibility based not only on the Federal Minimum Set-aside Election of a project, but also for any project whose owner received additional points in the 9% competition, any “deeper targeting AMI’s” noted in Appendix A of the projects regulatory agreements will also need to be met
- Our internal database will test for Federal Minimum Set-aside and Deeper Targeting Set-aside
- Any site and service amenities required in the regulatory agreement must also be in place

# AVERAGE INCOME TEST (AIT)

If the Property is 100% Tax Credit, the IRS has confirmed that the owner may go to a short-form recertification on subsequent recertifications on AIT projects

- CTCAC still requires a full income and asset certification at the first anniversary date of the household
- The Tenant Household Information Form (THIF) may be used at year 2+
- Be aware – going to a THIF recert may hamper your ability to swap unit designations if needed

# HOW DOES AIT WORK?



# Garden Valley Apartments\*

**Building 1**

20%	70%
50%	60%
40%	60%
40%	80%
30%	30%

**Building 2**

80%	70%
50%	70%
20%	50%
40%	30%
50%	60%

\* Competed and received and award of competitive 9% Credits

## Total Average of Units:

Building 1-

$$20\% + 70\% + 50\% + 60\% + 40\% + 60\% + 40\% + 80\% + 30\% + 30\% = \mathbf{48\% \text{ Average}}$$

Building 2-

$$80\% + 70\% + 50\% + 70\% + 20\% + 50\% + 40\% + 30\% + 50\% + 60\% = \mathbf{52\% \text{ Average}}$$

Building 1	
20%	70%
50%	60%
40%	60%
40%	80%
30%	30%

Garden  
Valley  
Apartments

Building 2	
80%	70%
50%	70%
20%	50%
40%	30%
50%	60%

## Total Average of Units:

Building 1 + Building 2 = **50% Average** across the Property

- Meets IRS AIT set-aside of all units average to at or below 60% of AMI
- Meets CA requirements that all 9% competitive projects average to at or below 50% of AMI

Building 1		Building 2	
20%	70%	80%	70%
50%	60%	50%	70%
40%	60%	20%	50%
40%	80%	40%	30%
30%	30%	50%	60%

Garden Valley Apartments



## Owner Designated Units:

2 units at 20%

3 units at 30%

3 units at 40%

4 units at 50%

3 units at 60%

3 units at 70%

2 units at 80%

Building 1	
20%	70%
50%	60%
40%	60%
40%	80%
30%	30%

Garden  
Valley  
Apartments

Building 2	
80%	70%
50%	70%
20%	50%
40%	30%
50%	60%

# AVERAGE INCOME HOW TO APPLY IT ON A PROPERTY

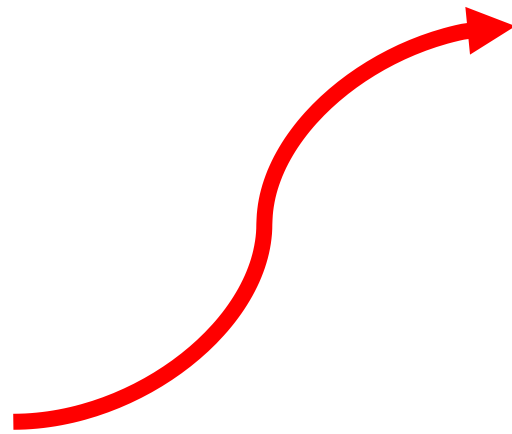
- The owner will need to use the individual unit's designation to determine whether a household is income eligible
  - The same AMI designation is used to compute the applicable rent
- The location of the designated units may “float” as needed but the number of each type of unit must stay the same as what is noted on the Reg Agreement

**Example:**

At the 1<sup>st</sup> recertification of a 30% household, management realized that there was an error in the income calculation for Unit 10 and the household was actually at 34% of AMI at move-in

This household would be considered over/income at move-in, since the 30% is a federal designation for AIT

Building 1	
Unit 1 - 20%	Unit 2 - 70%
Unit 3 - 50%	Unit 4 - 60%
Unit 5 - 40%	Unit 6 - 60%
Unit 7 - 40%	Unit 8 - 80%
Unit 9 - 30%	Unit 10 - 30%



Garden Valley Apartments

**Building 1**


Unit 1 - 20%	Unit 2 - 70%
Unit 3 - 50%	Unit 4 - 60%
Unit 5 - 40%	Unit 6 - 60%
Unit 7 - 40%	Unit 8 - 80%
Unit 9 - 30%	Unit 10 - 30%

The Household in Unit 5 qualified at 28% of AMI at the time they moved in **and continue to qualify at 28% currently**, but there were no 30% units available at the time they moved in, so they elected to take a 40% unit

**What are the owner's options?**

**Building 1**

Unit 1 - 20%	Unit 2 - 70%
Unit 3 - 50%	Unit 4 - 60%
Unit 5 - 40%	Unit 6 - 60%
Unit 7 - 40%	Unit 8 - 80%
Unit 9 - 30%	Unit 10 - 30%



CA allows for “floating” designations

- The owner can swap status on Units 5 and 10
- Unit 5 becomes 30% and the rent is adjusted to that limit
- Unit 10 becomes 40% and the rent is adjusted to that limit

*\* Households will be certified as new move-in's at the time of the swap.*

## Owner Designated Units:

2 units at 20%

3 units at 30%

3 units at 40%

4 units at 50%

3 units at 60%

3 units at 70%

2 units at 80%

**Building 1**

20%	70%
50%	60%
30%	60%
40%	80%
30%	40%

## Garden Valley Apartments

**Building 2**

80%	70%
50%	70%
20%	50%
40%	30%
50%	60%

Building 1	
Unit 1 - 20%	Unit 2 - 70%
Unit 3 - 50%	Unit 4 - 60%
Unit 5 - 40%	Unit 6 - 60%
Unit 7 - 40%	Unit 8 - 80%
Unit 9 - 30%	Unit 10 - 30%
	<b>Over Income - 34%</b>

The Household in Unit 2 qualified at 58% of AMI at the time they moved in, but there were no 60% units available at the time they moved in, so they elected to take a 70% unit

**Can the owner change the designations?**

Building 1	
Unit 1 - 20%	Unit 2 - <del>70%</del> 60%
Unit 3 - 50%	Unit 4 - 60%
Unit 5 - 40%	Unit 6 - 60%
Unit 7 - 40%	Unit 8 - 80%
Unit 9 - 30%	Unit 10 - <del>30%</del> 40%

Even though the overall average for the building remains the same (48% of AMI) the change no longer meets the designations determined for the property

- Doesn't match the Reg Agreement
- CTCAC will not approve this kind of change to occur
  - CTCAC will issue fines for Change in Unit Mix without CTCAC Approval



**2023**  
**COMPLIANCE**  
**MANUAL**  
**CHANGES**

**Section IV – Part 4.3**

- New Section – Determining AIT Set Aside
  - (A) – Minimum Requirements
  - (B) – Irrevocable Election
  - (C) – Designated Units
  - (D) – Next Available Unit Rule – AIT
  - (E) – Applicable Fraction
  - (F) – Required Reporting
  - (G) – Applicability Date

Q & A