

The Consolidated Appropriations Act of 2018 (the Act) established an Average Income Test (AIT) as a third minimum set-aside election for new HTC projects. Under appropriate circumstances, this option can be elected by owners in lieu of the existing minimum set-aside elections of 40 percent of the units at 60% of MTSP, and 20 percent of the units at 50% of MTSP.

A project meets the AIT Minimum Set-aside (IA MSA) when at least 40 percent of the units in the project are *both rent restricted and occupied by individuals whose imputed income average at initial occupancy* is at or below 60 percent of the Multifamily Tax Subsidy Project limits (MTSP) at the end of the first year of the credit period and at the end of each taxable year thereafter during the extended use period.

In addition, because the minimum set-aside election determines the income and rent limits for all low income units in the project, the project must also meet an overall imputed average of 60% of MTSP.

The IA MSA 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 20%, 30%, 40%, 50%, 60%, 70% and 80% of MTSP.

Owners should be aware of the potential risks associated with electing AIT. The IRS has not yet issued guidance on AIT and there are a number of potential complexities involved in using AIT, including increased complexity in compliance and challenges regarding the next available unit rule, particularly in developments that include market-rate units. Projects must meet all requirements of non-HTC funding sources and projects funded with tax-exempt volume limited bonds should help 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.

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.

PART 1: Requirements and Supporting Documentation for all AIT Proposals

- Projects are eligible to select AIT provided they have not filed Form 8609 with the IRS.
- Syndicator/Investor letter of approval referencing the specific rent and income tiers is required.
- Permanent lender(s) letter of approval referencing the specific rent and income tiers is required.
- Bond issuer letter of approval referencing the specific rent and income tiers is required. If Minnesota Housing is the bond issuer, Minnesota Housing approval is required, and requests will be considered on a case-by-case basis. Projects must meet Minnesota Housing's [Market Study Guidelines](#) as updated for AIT.

- When paired with a Minnesota Housing Low and Moderate Income Rental (LMIR) loan, the project must meet both the HTC threshold as well as the minimum restrictions under the LMIR program, and if applicable, bond statutes. The restrictions under the LMIR and bond statutes allow sufficient flexibility to pair with AIT set-aside. See the [LMIR Procedural Manual](#) for more information.
 - For underwriting of a LMIR loan when AIT is selected as the HTC minimum set-aside, Minnesota Housing may underwrite rents at 60% MTSP limits even for units with incomes up to 80% MTSP. At Minnesota Housing’s sole discretion, a small portion of the units may be underwritten at rents higher than 60% MTSP if the proposed rents are at least 10% below achievable market rate rents.
- Owners must complete the Minnesota Housing [AIT Election/Certification Form](#) and if making a multiple building election, include a draft copy of the Owner’s Attachment to Form 8609.
- Provide updated information on the rent and income tiers on the [Income and Rent Grid Form](#) (based upon the Novogradac form).
- Provide updated Multifamily Workbook (if applicable as outlined below).

PART 2: Application of AIT by New or Previously Selected Projects

A. Previously Selected Projects

Minnesota Housing permits AIT on projects that have previously been selected or received a 42M letter, so long as Form 8609 has not yet been filed with the IRS. The requirements apply to HTC Only projects, HTC projects with deferred Minnesota Housing financing, and HTC projects with a Low and Moderate Income Rental (LMIR) amortizing loan and are as follows:

- No change in 9% HTC amount
- No change in deferred and/or HTC selection criteria or scoring for projects with a Minnesota Housing deferred loan or 9% HTCs
- 4% HTC Only projects must continue to meet minimum scoring requirements
- Additional Market Study guidance:
 - If the owner is electing AIT and 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 revised [Minnesota Housing Market Study guidelines](#) in the revised Chapter 2.
 - If the owner is electing AIT but 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.
- Updated Multifamily Workbook for projects that intend to change rents or incomes from what was designated at the time of selection.
- Provide updated information on the rent and income tiers on the [Income and Rent Grid Form](#) (based upon the Novogradac form).
- Income and rent restrictions will be incorporated into, and be a condition of, the deferred loan legal documents for any HTC project with Minnesota Housing deferred financing.
- Developments must comply with the requirements of any Minnesota Housing financing.

HTC Projects with Deferred Financing

For 2018 RFP/2019 HTC Round 1 HTC selected projects: AIT is permitted, but no increase in the Minnesota Housing deferred loan is allowed.

- Changes to the rent and income tiers may be permitted, subject to adequate supporting documentation as required in Part I of this guidance, 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.
- Sufficient time must be allowed for Minnesota Housing staff to re-underwrite the project.

For 2017 RFP/2018 HTC, 2018 Round 2 and previously selected projects with Minnesota

Housing financing: The AIT election is permitted, but Minnesota Housing will generally not re-underwrite the project or permit a change in the rent or income structure, or to the deferred selection criteria but will consider exceptions for preservation projects and extenuating circumstances on a case by case basis. No increase in the Minnesota Housing deferred loan is allowed.

HTC projects with a LMIR Loan

AIT is permitted, subject to Minnesota Housing approval, if the project has not yet received Minnesota Housing Board approval to enter into a loan commitment.

B. New Applications for HTC Projects

- Submit all applicable supporting documentation as outlined in Part 1 of this guidance.
- Provide the [Income and Rent Grid Form](#) (based upon the Novogradac form) if the project is electing single-building project or the development will elect multiple building project and contain more than one project. If the project will elect to treat all buildings as **one** multiple building project, complete the rent grid in the 2019 version of the Workbook.
- New applications are advised to select the AIT set-aside at the time of application.

Submission Process

Projects that wish to elect AIT should submit the required supporting documentation at the following stage:

- Application: for the 2019 Round 2 HTC or the 2020 Round 1 HTC Application
- Carryover Agreement
- Application for the issuance of Form 8609
- 42M Application
- Other project stage not listed above

AIT election 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.

Email tamara.wilson@state.mn.us to indicate that you will submit the required materials via the Portal for eligible projects or to submit via [box.com](https://www.box.com) for projects that do not have a Portal account.

Contact Us

For more general information, please visit www.mnhousing.gov or contact [Summer Jefferson](#) at 651.296.9790. For previously selected projects, contact your assigned underwriter.

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