Average Income Test — Next Steps for HFAs

by Matt Rayburn, Indiana Housing and Community Development Authority

After much anxious waiting and anticipation across the LIHTC industry, the Internal Revenue Service and Department of the Treasury released the final and temporary Average Income Test (AIT) regulations on Oct. 7, 2022. Fortunately, the wait was worth it. The new regulations align with industry recommendations on treatment of the minimum set-aside test, provide needed guidance on designating and tracking units, and grant flexibility on modifying unit designations.

This edition of *The Credential* provides an in-depth analysis of what the regulation says. Rather than reiterating that information, here's what HFA staff can and should do next.

1. First and foremost, read the new regulations. There are many good industry blog posts and webinars that summarize the rule, but it is important that HFA staff — both on the allocation and compliance side — read the full regulation. Yes, it is 64 pages long, but this is a critical regulation for the future of our program. Taking the time to read the regulation will help you better think through your policies and procedures.
2. Once you have read the regulation and discussed internally, the next step is to implement and set policy. Eventually this will involve amending Qualified Allocation Plans and compliance manuals, so make sure to do so when possible.

   In the interim, it is important to give partners an indication of your intentions. Developers are already planning deals that they will submit as tax credit applications in 2023 and 2024. Knowing if and how their HFA plans to implement the AIT can be critical in designing the unit mix and pro forma to determine if a proposed development has sufficient market demand and can pass underwriting standards.
3. Finally, don't overcomplicate or prohibit AIT. The LIHTC program in general, and the AIT rule in particular, are already complicated enough. Adding extra layers of complexity will not only make things more difficult for compliance and property manager professionals, but also for HFA compliance monitoring staff.

   With the new regulations, we are now hopeful that more investors and developers will choose to utilize the AIT, which will allow a broader range of households (at both lower and higher income levels) to access affordable housing units. If extra HFA requirements

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dissuade or prohibit developers from pursuing AIT projects, then the LIHTC program will still will not serve those additional income ranges who need housing.

Change is never easy, even when we had waited and hoped for a change to come. But together, as an industry of peers, we can now move the AIT forward and successfully implement it into LIHTC projects.

Be part of the solution and keep in mind the additional households we will now be able to serve. I truly believe that the AIT is positive for the LITHC program, that it furthers the HFA mission of providing affordable housing, and that with the new regulations in place we can now make AIT a reality.

Thanks to all who were involved in getting the regulations amended. Now let's put them to good use.

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