Version Control Document (Revisions)

Version	Date	Page #	Changes
1	12/27/2022	N/A	N/A
2	1/6/2023	Entire Document	Updated from feedback received; removed Project information to focus more on AIT-specific guidance
3	1/26/2023	Pgs. 5, 7	1. Included additional screenshots and details for excluding a unit 2. Excluded Unit clarification that the Applicable Fraction in this guidance refers to the percentage in the “EUA” for the “Project” for and used in Compliance monitoring 3. Excluded Unit example screenshots updated to provide varying scenarios for eligible excluded units and ineligible excluded units 4. Inserted revised NAU Rule screenshots to show the correct calculations

Compliance and Asset Management Average Income Test (AIT) Written Guidance

On October 12, 2022, the IRS published the federal [Low-Income Housing Tax Credit Final and Temporary Average Income Test regulations](#).

The Virginia Housing Average Income Test guidance ("AIT") is issued according to Treasury Regulations, Section 42 of the Internal Revenue Code, and published IRS guidance for properties in the Virginia Housing portfolio. Virginia Housing may amend the guidance to conform with the regulations and guidance or as may otherwise be appropriate, as determined by Virginia Housing. In the event of any inconsistency or conflict between these monitoring procedures and the procedures outlined in the regulations, the provisions outlined in the regulations will apply.

The project owner and its management agent are responsible for being aware of the Site's specific program requirements to ensure compliance with the Tax Credit program and contractual agreements with Virginia Housing. Contact your assigned Compliance Officer if you have questions about your project's specific program compliance requirements.

Please Note: In this document, "**Owner**" describes the owner entity which received the Tax Credit allocation, and "**Site**" includes all physical residential Buildings and all units included in the Tax Credit allocation. "**Project**" is defined on line 8b in Part II on the 8609 form(s), and "**Building**" contains the residential units in the Project. "**Tenant**" describes qualified occupants in a unit designated with the Average Income imputed income limitations in 10% increments from 20% to 80% area median income (AMI).

Federal Requirements Minimum Set-Aside Tests

The Minimum Set-Aside establishes the qualified project, including the income and rent limits for all designated low-income units in the Project. Once elected in Line 10c in Part II on the 8609 form(s), it is irrevocable. A Project must meet one of three minimum threshold occupancy tests, known as a "Minimum Set-Aside," to qualify for a Tax Credit allocation:

The "Consolidated Appropriations Act of 2018", effective March 23, 2018, established the third minimum set-aside election for Tax Credit allocations to include income and rent limits at 20%, 30%, 40%, 50%, 60%, 70%, and 80% AMI for low-income units.

1. **20-50 Test:** 20% of the units in the **Project** must be rent-restricted and occupied by Tenants with income at 50% or less of the AMI adjusted for family size.
2. **40-60 Test:** 40% of the units in the **Project** must be rent-restricted and occupied by Tenants with income at 60% or less of the AMI adjusted for family size.
3. **Average Income Test ("AIT"):** 40% or more of the units in the **Project** are both rent-restricted and occupied or previously occupied by Tenants whose income does not exceed the designated imputed income limitation in 10% increments between 20% to 80% of the AMI, **and** the average of the imputed income limitations does not exceed 60% of the AMI.

   The AIT is based on the AMI income limitation assigned to the unit (aka Unit Designation), not the actual income of the Tenant. The Unit Designations are allowed to "float" between units in the project **and** must average 60% AMI or less to meet the AIT.

Required AIT Annual Reporting:

The Owner must annually report:

- **1-**Unit Designation Changes **and**
- **2-**the Qualified Group of Units for the AIT ("AIT QGU") **and**
- **3-**the Qualified Group of Units for the Applicable Fraction **(**"Applicable Fraction QGU") **and**
- **4-**Excluded Units

The Owner must attach the property rent roll and Occupancy and Demographics report according to the Owner's Certification Year-End report AIT reporting instructions. ***See the guidance in the Annual Tax Credit Reporting User Instructions**.

1-Unit Designation Changes

Unit Designations: The Owner must designate each unit's imputed income limitation from 20% to 80% AMI before a unit is first occupied, on vacant units after turnover, or to correct non-compliance for existing Tenant (s) under the AIT **and** annually report whether the development has qualified low-income Project(s) under IRC §42(g)(1), at the end of the taxable year (December 31).

The IRS AIT Regulations allow an Owner to change unit designations according to the following:

1. **IRS** established procedures in forms, instructions, or guidance
2. **Virginia Housing's** publicly available written procedures
3. **Protections under federal programs** and requirements for rental housing, such as ADA, Rehabilitation Act, VAWA, Fair Housing, or other state or local laws that protect Tenant housing

Reporting Unit Designation Changes - Unit designation changes must be reported to Virginia Housing as they occur in the online tenant monitoring system **and** annually in the Owner's Certification Year-End report.

Owner AIT Written Guidance – Unit Designation Changes

The Owner must establish written policies and procedures for AIT unit designation changes. Unit designation changes allow the Project to adapt to existing or potential Tenants' needs. Virginia Housing approval is not required before a unit designation change during the reporting year. However, all unit designation changes must be reported in the annual Owner's certification Year-End report.

Unit Designations may Change on:

1. **Initial Lease-up –** any **unoccupied** unit (market or low-income) before occupancy
2. **Turnover –** an **unoccupied** previously designated low-income unit
3. **As Needed –** an **occupied** unit before the end of the taxable year in which the change occurs

Reasons for changing a unit designation include:

1. **Tenant Request/Unit Transfer –** as requested by the Tenant for income increases or decreases, unit transfer, or other approved requests (if approved by the Owner)
2. **Qualified Group of Units ("QGU") –** to confirm the AIT QGU or Applicable Fraction QGU
3. **Applicable Fraction –** to correct the specified number of low-income units
4. **Qualified Tenant Application –** to fill a vacant unit (for changes in the market and meeting Tenant demand)

2-Qualified Group of Units for the AIT – Project Rule

The IRS AIT Final Rule confirms that because the AIT allows a range of income limitations, the test is satisfied if the Owner identifies a QGU that meets the following criteria:

- **40% or more** of the residential units in the Project are **designated** at 20% to 80% AMI income limitations, **and** each unit is
- – **habitable** and does not have uncorrected non-compliance,
- – occupied or previously occupied by a **qualified Tenant** for the unit's designated imputed income limitation,
- – rent-restricted,
- – **and** the designated imputed income limitations **collectively average 60% or less** of AMI

3-Qualified Group of Units for the Applicable Fraction – IRS Building Rule

The Applicable Fraction QGU includes all habitable, residential low-income units occupied **or** previously occupied by a qualified Tenant as of December 31 **and** the Unit Designations collectively average 60% AMI. The Project must maintain the required total number of low-income units specified in the Extended Use Agreement ("EUA") throughout the Extended Use Period. **Please Note:** The Applicable Fraction examples in this guidance document describes the total Project Applicable Fraction required in the Virginia Housing EUA.

Reporting the QGU to Virginia Housing – See the following examples:

Project Details – The Applicable Fraction in the EUA **for the Project** is 100%, **and** all units are designated between 20% and 80% AMI, occupied or previously occupied by a qualified Tenant, **and** Buildings are a part of a Multiple Building Project (IRS 8609 Line 8b).

Reporting the AIT QGU – The Owner identifies four out of ten units (40% of the Project), which average 60% AMI, **Units A1 and A2 at 40% AMI**, **and** **B1 and B3 at 80% AMI**. The Owner reports the units with "x" in the report. See the highlighted units in the screenshot below.

Reporting the Applicable Fraction QGU includes ten out of ten units, which collectively average 60% AMI. **Unit A4** was previously occupied by a qualified Tenant and is counted in the 100% Applicable Fraction calculation.

Building-BIN	Unit Status	Unit #	AIT Qual Group of Units	Own Inc Desig	Own Rent Desig	
VA01 - Building 1	Occupied	A1	x	40%	40%	
VA01 - Building 1	Occupied	A2	x	40%	40%	
VA01 - Building 1	Occupied	A3		70%	70%	
VA01 - Building 1	Vacant	A4		50%	50%	
VA01 - Building 1	Occupied	A5		50%	50%	50% Bldg 1 Avg
VA02 - Building 2	Occupied	B1	x	80%	80%	
VA02 - Building 2	Occupied	B2		70%	70%	
VA02 - Building 2	Occupied	B3	x	80%	80%	
VA02 - Building 2	Occupied	B4		60%	60%	
VA02 - Building 2	Occupied	B5		60%	60%	70% Bldg 2 Avg
			Average of Unit Designations	60%	60%	
			Project Applicable Fraction in EUA	10/10	100%	

In the example above, the average of the unit designations in Building 2 may exceed the 60% AMI average because both Buildings are a part of a multiple-Building Project, **and** the AIT QGU and Applicable Fraction QGU are satisfied since all units collectively average 60% AMI.

4-Excluded Units

Excluded Units are ineligible to be included in the AIT QGU or Applicable Fraction QGU **as of December 31.** Ineligible units include approved Exempt Units, low-income units removed from the QGU to maintain compliance with the AIT Minimum Set-Aside, uninhabitable units, units occupied or most recently occupied with ineligible Tenants, units lost due to a Casualty Loss or Next Available Unit rule violation, market units, or units with other uncorrected non-compliance as of December 31.

Reporting Excluded Units

The Owner must annually report Excluded Units to Virginia Housing in an attachment to the annual Owner's certification Year-End report. See the following examples of Excluded Units.

Excluded Unit for an approved Exempt Unit:

Unit 1	**60**
Unit 2	80
Unit 3	60
Unit 4	**70**
Unit 5	40
Unit 6	**Exempt**
Unit 7	40
Unit 8	80
Unit 9	**70**
Unit 10	**40**

Total Project Average:	**60%**
AIT Qualified Group of Units:	**Units - 1, 4, 9, 10**
Applicable Fraction QGU Average:	**60%**
Applicable Fraction (App. Frac.):	**100%**
Excluded Unit(s):	**Unit 6- Exempt Unit**

The EUA Project Applicable Fraction is 100%. The approved Exempt Unit is excluded from the total unit calculation allowing the Project EUA Applicable Fraction to remain 100%

Excluded Unit for an ineligible unit as of December 31:

*In the screenshot example below, **Unit 1** is ineligible and is not counted in the AIT QGU or Applicable Fraction calculation, resulting in a Project Applicable Fraction of 90%.

Unit 1	**OI-Ineligible**
Unit 2	80
Unit 3	60
Unit 4	**70**
Unit 5	40
Unit 6	**Exempt**
Unit 7	40
Unit 8	80
Unit 9	**70**
Unit 10	**40**

Total Project Average:	**60%**
AIT QGU:	**Units - 3, 4, 9, 10**
App. Frac. QGU:	**60%**
App. Frac. Reduced:	**90%**
Excluded Unit(s):	**Units - 1, 6**

In the example, units 1 and 6 are Excluded Units in the annual report. The EUA Project Applicable Fraction is reduced by Unit 1 being ineligible; however, the Aplicable Fraction QGU average remains at 60% AMI

Excluded Unit to maintain the Applicable Fraction QGU for the annual reporting:

Unit 1	**OI-Ineligible**
Unit 2	80
Unit 3	**60**
Unit 4	**70**
Unit 5 Vacant	**40**
Unit 6	**Exempt**
Unit 7	40
Unit 8	**Excluded**
Unit 9	**70**
Unit 10	**OI-Ineligible**

Total Project Average:	**60%**
AIT QGU:	**Units - 3, 4, 5, 9**
App. Frac. QGU:	**60%**
App. Frac. Reduced:	**60%**
Excluded Unit(s):	**Units - 1, 6, 8, 10**

Units 1 and 10 are Ineligible, Unit 6 is an approved Exempt Unit, and Unit 8 is Excluded to maintain the Applicable Fraction QGU average

Compliance Monitoring for the AIT

Virtually every Tax Credit rule has a variation or exception for specific circumstances. Virginia Housing will monitor the AIT according to the IRS AIT Final Rule and property-specific occupancy requirements in the Extended Use Agreement, Regulatory Agreement, and IRS 8609 form. Virginia Housing is responsible for determining the existence of non-compliance and reporting findings to the IRS within the required timelines on IRS form 8823 based on the nature of the violation in relation to the Unit, Building, or Project as required in all applicable categories. The IRS will ultimately determine the tax consequences of non-compliance.

Owner Reporting of AIT Non-compliance

The Owner must annually report the compliance status of all units in the AIT and Applicable Fraction QGU. Non-compliance discovered and corrected before receiving notice of a Virginia Housing compliance monitoring audit is not reportable to the IRS and shows due diligence in managing the program requirements.

AIT Non-compliance Correction Waiver: The IRS AIT Final Rule allows Virginia Housing to provide a written waiver with an extension of time to correct AIT non-compliance discovered by the Owner **or** Virginia Housing. Contact your assigned Compliance Officer to submit a written request for a waiver of AIT non-compliance.

The AIT and Next Available Unit Rule (NAU rule) Over Income – Building Rule

The unit is considered Over Income if the Tenant's income increases above 140% of the imputed income limitation at 60% AMI for unit designations from 20%-60% AMI, **or** 140% of the 70% AMI **or** 80% AMI imputed income limitation. The next available unit of **comparable or smaller size** in the same Building must be leased to an income-eligible Tenant at or below the unit designation of the Over-Income unit.

The NAU rule is a Building rule designed to enable the Owner to maintain the first-year Applicable Fraction for each Building, which is the required number of units and floor space required for low-income Tenants throughout the Extended Use Period.

The IRS AIT Final Rule confirms that if there are several Over-Income units in the same Building, the replacement of low-income units does not have to follow a particular order. The Owner may choose to rent the next available unit of smaller or comparable size at any unit designation as needed to meet and maintain the AIT in the Project.

Non-compliance with the NAU rule can have significant consequences, even in 100% low-income Buildings. If any low-income vacant unit that is available is rented to a non-qualified Tenant, all Over-Income units of comparable or ***larger size*** in the same building are out of compliance, losing their status as low-income units, **and** must be included in the annual report as an Excluded Unit.

See the example on the next page showing the NAU rule with the annual AIT QGU and Applicable Fraction QGU reporting.

Example of AIT Annual Reporting – Over Income Tenant (NAU rule)

The Project contains 10 units of equal size, with one unit approved as an Exempt Unit, and the Applicable Fraction of the Project in the EUA is 100%. The project owner includes four units for the AIT QGU in the annual report, and 9 of the 10 units are qualified low-income units and are included in the Applicable Fraction QGU reported to Virginia Housing. Because the project is 100% low-income, a self-certification of income, confirmation of occupancy, rent, utility allowance, and student status is obtained annually for all Tenants and updated in the online tenant monitoring system.

Unit 1	**60**
Unit 2	80
Unit 3	60
Unit 4	**70**
Unit 5	40
Unit 6	**Exempt**
Unit 7	40
Unit 8	80
Unit 9	**70**
Unit 10	**40**

Total Project Average:	**60%**
AIT Qualified Group of Units:	**Units - 1, 4, 9, 10**
Applicable Fraction QGU Average:	**60%**
Applicable Fraction (App. Frac.):	**100%**
Excluded Unit(s):	**Unit 6- Exempt Unit**

The EUA Project Applicable Fraction is 100%. The approved Exempt Unit is excluded from the total unit calculation allowing the Project EUA Applicable Fraction to remain 100%

- **In years 3 and 4**, the self-certification form indicates a change in occupancy (adding an occupant) in Unit 1. The household income is third-party verified and determined to exceed 140% of the 60% income limit. The rent for Unit 1 continues to be rent-restricted at 60% AMI and is eligible to be included in the AIT QGU and Applicable Fraction QGU in the annual reporting. **See the screenshot for years 3 & 4 below.**

In the example below, units 1-10 are one Project according to Line 8b on the 8609 form

Years 1 & 2		Years 3 & 4		Year 5		
Unit 1	**60**	**Unit 1**	**OI-Eligible**	Unit 1	**OI-Ineligible**	
Unit 2	80	Unit 2	80	Unit 2	80	
Unit 3	60	Unit 3	60	**Unit 3**	**60**	
Unit 4	**70**	**Unit 4**	**70**	**Unit 4**	**70**	
Unit 5	40	Unit 5	40	**Unit 5 Vacant**	**40**	
Unit 6	**Exempt**	Unit 6	**Exempt**	Unit 6	**Exempt**	
Unit 7	40	Unit 7	40	Unit 7	40	
Unit 8	80	Unit 8	80	Unit 8	**Excluded**	
Unit 9	**70**	**Unit 9**	**70**	**Unit 9**	**70**	
Unit 10	**40**	**Unit 10**	**40**	Unit 10	**OI-Ineligible**	
Total Project Average:	**60%**		**60%**		**60%**	
Qualified Group of Units:	**Units - 1, 4, 9, 10**	**AIT QGU:**	**Units - 1, 4, 9, 10**	**AIT QGU:**	**Units - 3, 4, 5, 9**	
AIT Qualified Group of Units Average:	**60%**	**AIT QGU Average:**	**60%**	**AIT QGU Average:**	**60%**	
Applicable Fraction QGU Average (App. Frac. QGU Avg):	**100%**	**App. Frac. QGU Avg:**	**100%**	**App. Frac. QGU Avg:**	**63%**	**Average with Unit 8**
Excluded Unit(s):	**Unit 6**	**Excluded Unit(s):**	**Unit 6**	**Excluded Unit(s):**	**Units - 1, 6, 8, 10**	
				Corrected App. Frac. QGU Avg.:	**60%**	**Average after excluding Unit 8**

The EUA Project Applicable Fraction is 100%. The approved Exempt Unit is excluded from the total unit calculation allowing the Project EUA Applicable Fraction to remain 100%

All units are eligible for the AIT QGU and the Applicable Fraction QGU

Units 1, 6, 8, and 10 are ineligible units and must be reported as Excluded Units in the annual report. Unit 8 is excluded to maintain the required Project AIT Applicable Fraction QGU

- **In year 5**, a non-qualified Tenant moves into Unit 10. **See the screenshot for year 5 above.** The non-qualified Tenant moving into Unit 10 causes an NAU rule violation, and units 1 and 10 cease to be treated as low-income units. The two over-income units reduce the Project Applicable Fraction, **and** the Owner must report units 1 and 10 as Excluded Units in the annual report since they are not eligible to be included in the AIT QGU or the Applicable Fraction QGU. When units 1 and 10 are excluded, the Project AIT QGU and Applicable Fraction QGU exceed 60%. Therefore, other low-income units in the Project must be selected to meet the AIT QGU (units 3, 4, 5, and 9 above), and another unit (unit 8 above) must be excluded to maintain the Project Applicable Fraction QGU. **See the AIT Q&A on the Compliance Monitoring page on our website.**

The AIT and a New Allocation for Existing Developments ("Resyndication")

Resyndication describes a new allocation of Tax Credits for a Project that was issued an IRS 8609 form and placed in service. A Project approved for a Resyndication may elect the AIT; however, the AIT election does not terminate the existing 20-50 or 40-60 income and occupancy requirements of the original Tax Credit allocation Minimum Set-Aside election on Line 10c of the IRS 8609 form for the Project. The Project receives a new EUA for the Resyndication and will be monitored according to each agreement's most restrictive EUA occupancy requirements.

Review the EUA for your Project requirements and contact your assigned Compliance Officer if you have questions.

The AIT and 4%Tax-Exempt Bonds

The IRS Final AIT regulations do not include the Tax-Exempt Bond program. However, Virginia Housing permits 4% Tax-Exempt Bond Projects to implement AIT and all its income limitations as long as at least 40% of all residential low-income units in the **Project** are designated at or below 60% AMI throughout the Extended Use Period.

***Example:** In the example below, 40% of all units are designated below 60% AMI at the 40% income limitation, which meets the Virginia Housing unit mix requirements for Sites with 4% Tax-Exempt Bonds.

Multiple Building Project
Line 8b in Part II on IRS form 8609

Building A Unit #	Imputed Income Limitation	Sq. Feet
A1	80%	1100
A2	80%	1100
A3	*40%	900
A4	*40%	800
A5	*40%	900
Average Building AMI:		56%
Total Sq. Ft.:		4800

Building B Unit #	Imputed Income Limitation	Sq. Feet
B1	*40%	900
B2	*40%	800
B3	80%	1100
B4	80%	1100
B5	80%	900
Average Building AMI:		64%
Total Sq. Ft.:		4800

*The Tax-Exempt Bond 40% at or below 60% unit designation requirement is met

Average Project AMI:
60%

The AIT and the Online Tenant Monitoring System

Compliance and Asset Management is working with our online tenant monitoring system vendor on the software updates needed to manage and monitor AIT compliance.

***AIT Software Updates Pending**

Contact your assigned Compliance Officer if you need system access or have questions about the required updates for all low and moderate-income units for the Project.

Important Project Information

Please sign up to receive email notifications and announcements about Virginia Housing's Rental programs. Choose Property Management for Compliance & Asset Management updates here.

Qualified Allocation Plan (QAP)

The Qualified Allocation Plan (QAP) identifies the selection criteria for determining housing priorities in Virginia and gives preference to Projects serving the lowest-income Tenants, for the longest periods, with the highest number of low-income units. The QAP also guides compliance with the Project rules based on the year the Project was awarded federal Tax Credits.

If **point incentives** are awarded for a fixed number of 30%, 40%, and 50% units in the EUA, the units must be maintained in the designated income limitations throughout the Extended Use Period (30+ years).

Low-income units may be counted towards meeting the annual report of the AIT and Applicable Fraction QGU if the units are habitable, the Tenants are income eligible, and they pay the unit-designated AMI gross rent throughout the Extended Use Period.

Tax Credit Manual

The Tax Credit Manual supports the QAP and provides guidance and instruction for policies and qualifications related to the federal Tax Credit program. The AIT requirements are in the Appendix section of the Tax Credit Manual on our **website**.

AIT Requirements

1. The Owner must forfeit the right to pursue a Qualified Contract
2. 100% low-income units
3. Multiple building election, "Yes" on Line 8b, in Part II on the IRS 8609 form
4. **4% Tax-Exempt Bond Projects –** Unit Details form in the allocation application must show at least 40% of the total units designated at or below 60% AMI in the unit mix

LIHTC Application Workbook used for Tax Credit Allocations

The Owner submits the LIHTC Application Workbook (Workbook) before the Project is built and on-site staff is hired. The Workbook includes the unit mix, point categories, and other Project requirements to maximize approval of a Tax Credit allocation.

Extended Use Agreement ("EUA")

The EUA identifies the Project requirements the Owner must meet and aligns with the QAP, the LIHTC Allocation Workbook, and the IRS form 8609. The EUA also lists the Project's Applicable Fraction, which is the total percentage of qualified low-income units always required in the Project.

The recorded EUA will include language for the required number of units for which point incentives were awarded, along with the requirement to maintain an average of 60% AMI for at least 40% of the total low-income units in the Project **and** the Applicable Fraction.

Section 5 of the EUA contains the required occupancy, income and rent restrictions, and other requirements for the Project for 30+ years.

8609 Form Part I – Issued by Virginia Housing

Virginia Housing issues Part I of the IRS 8609 form to the Owner with the Tax Credit allocation amount, the Project allocation date, and Placed in Service Date for each Building.

8609 Part II - Executed by the Owner

The Owner must complete and sign Part II of the IRS 8609 form to define the Project in line 8b, identify the beginning of the Credit Period in line 10a, and select the Minimum Set-Aside election in line 10c. A copy of the executed 8609 Part II and attachment showing all Buildings for Line 8b must also be sent to the Project's assigned Compliance Officer.

Average Income HUD Published Limits

HUD is mandated to publish income limits for the Tax Credit program annually, including the Average Income limits. The limits can be found using the link below.

Multifamily Tax Subsidy Income Limits - HUD User

Virginia Housing Program Income & Rent Limits

Virginia Housing assembles and posts the income and rent limits for the Tax Credit program, including MTSP, HERA Special, Average Income, and National Non-Metropolitan tables, in the Program Limits Excel document posted on our **website**. The Tax Credit income and rent limits are shared as a resource. The Owner must consult with professionals to confirm the proper limits for Tax Credit Sites.

Extremely Low-Income Limits (ELI)

The 30% AMI level calculated for the AIT **is not** the same as the Extremely Low-Income (ELI) restriction under the federal and state National Housing Trust Fund or HOME programs. The Owner must be mindful of the program differences of Projects with layered program requirements and follow the most restrictive program requirements.

Virginia Housing Rental Compliance Monitoring Website

Information for compliance monitoring guidance, Tenant and required lease forms, annual reporting updates and instructions, and other program information can be found on the Compliance Monitoring page of our **website**.