Low-Income Housing Tax Credit and Rural Housing: A Basic Overview for Advocates

GIDEON ANDERS
CATHERINE BISHOP
NATIONAL HOUSING LAW PROJECT
NOVEMBER 20, 2013

GoToWebinar Interface
1. Viewer Window
2. Control Panel
Housekeeping

- First of 3 webinars providing basics of housing programs covered by VAWA 2013
- Materials were emailed to registrants this morning and will be emailed again after the webinar, along with evaluations.
- Many submitted questions when you registered and we will do our best to address those questions in the presentation.
- Materials and recording will be posted at www.nhlp.org/OVWgrantees.
- Poll: Which best describes you?

Today We Will Cover

- An overview of the Low Income Housing Tax Credit (LIHTC) and Rural Development (RD) multifamily housing.
- There are other federal housing programs:
  - Three largest HUD programs that serve the lowest income families—public housing, voucher program and Project-based Section 8. We plan to have a webinar covering those programs in the near future
  - In addition, will soon hold a webinar covering HUD programs for the homeless.
Why Does This Matter?

• Domestic and sexual violence advocates may encounter LIHTC or Rural Development rental housing because:
  o 40% of LIHTC housing is occupied by extremely low income families
  o RD housing is often the only housing survivors in rural areas can afford on their own.
  o The RD and HUD rental assistance programs are often used with LIHTC
  o Access to this housing may help survivors escape perpetrators.

Why Does This Matter? (cont’d)

• To improve survivors’ chances of securing permanent housing, it is critical for advocates to form relationships with LIHTC and/or RD housing providers.
• Advocates may need to negotiate with owners or managers of this housing to stop evictions or other negative actions against survivors.
Low-Income Housing Tax Credit Program

Key Features of the LIHTC Program

- It is tax policy, not a “housing program”
- LIHTC is the largest program funding new multifamily housing and is growing
- Income eligibility generally higher than HUD programs
- Rents NOT directly tied to tenant’s income
- Lease with specific provisions may not be required
- No grievance procedure
- Good cause for eviction?
- Not considered federally assisted

If another housing program is used with LIHTC, the more restrictive rules apply regardless of the source.
Comparing the Subsidized Housing Programs

<table>
<thead>
<tr>
<th>Units in Millions</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
</tr>
<tr>
<td>0.5</td>
</tr>
<tr>
<td>1</td>
</tr>
<tr>
<td>1.5</td>
</tr>
<tr>
<td>2</td>
</tr>
<tr>
<td>2.5</td>
</tr>
</tbody>
</table>

- **Public Housing**: Project-Based Section 8, Voucher Program, LIHTC, RD Section 515

How the Program Works

- **Number of Units**: About 2,000,000, growing at about 100,000 annually, cost about $8 billion/year; credit allocation indexed Dec. 2000

- **How Program Works: Subsidy Mechanism**:
  - Subsidy through tax system, not annual federal appropriations
  - Fixed amount of tax credits allocated to state Housing Finance Agency
    - Based on a per capita x $2.25, or minimum of $2.6 million/year
  - Investors buy income tax credits in qualified properties that received state allocation, creating cash equity for owner
  - In exchange for agreement to rent specific number of units to qualified tenants at restricted rents, usually below-market
  - Two tax credits available: 9% of depreciable basis, competitively allocated, and 4% of basis, comes with state bond financing, also capped and allocated by state HFA (competition varies)
    - Bonds $95 x per capita or **minimum** of $291.875 million.
Ownership and Use Restrictions

- **Ownership**: usually limited partnerships; often sold after initial 15-yr. compliance period to general partner or others
- **Minimum Use Restrictions (per IRC § 42)**:
  - **Occupancy and admissions**: owner choice of two: >20% of Units occupied by tenants @ <50% AMI, or >40% of units occupied by tenants @ <60% AMI
  - **Rents**: those units must have “affordable” flat rents set at 30% of income of tenants at top of applicable AMI category, with assumed family size of 1.5 persons/bedroom
  - **Term**: For properties developed between 1986 and 1989, restrictions last only 15 years; post-1989 developments have at least 30 years, and up to 55 years in some states
  - **Non-Discrimination**: LIHTC owners may not refuse to rent to Voucher holders because of their status

Qualified Allocation Plan (QAP)

- State Housing Finance Agency (HFA) develops a QAP and reviews annually; properly noticed public hearing and public comment
  - **States may impose more restrictive requirements than Internal Revenue Code minimum**:
    - Deeper income targeting and lower rents
    - Longer use restrictions
    - Eviction protections for DV survivors
    - May provide a preference or set aside for special populations, disabled, elderly, homeless, DV survivors
Pennsylvania Qualified Allocation Plan

- State added language to its QAP addressing DV and evictions after advocacy from local programs.
- “Experience as a victim of domestic violence alone may not constitute good cause for eviction.”
- Language can be used as grounds for defending against an eviction based on DV committed against a survivor living in an LIHTC unit.
- May be time to urge this change now to be consistent with VAWA 2013

Key Components

- **Who’s Involved?** IRS, state credit allocation agency, owner, management (either owner or separate company)
- **Key Regulatory Features:** State agency regulatory agreement, Treasury regulations at 26 C.F.R. §1.42, Lease. Owner files annual compliance certification with state agency.
Key Components

- **Tips for Determining What Kind of Housing Is Involved:** Lease; Rent Level; Owner type; Age of Housing (LIHTC can be used for new or rehab, but all post-1986); Ask manager
- **Getting Information:** 26 U.S.C. § 42 (part of Internal Revenue Code); 26 C.F.R. §1.42; state compliance guidance

Admissions

- Initial occupancy of rent-restricted units must be by tenants in specific income categories
- No discrimination against § 8 voucher holders
- No immigration restrictions, unless project has another funding source with such restrictions.
- Only other protections come from:
  - Fair housing laws
  - VAWA 2013 imposes obligations on LIHTC properties
  - Any state-imposed requirements per QAP & Regulatory Agreement
  - Possibly due process protections (governmental action & property interest issues)
Gwen

- Facts:
  - Gwen applied for an LIHTC unit.
  - In her application, she listed her Section 8 voucher as income.
  - Gwen also checked “yes” on a box asking “Have you ever been arrested?”, but she made a note that charges weren’t filed because she acted in self-defense.
  - Gwen’s application is denied without explanation.
  - What might you do to help Gwen?

Enter suggestions in the answer box.

Admissions: Student Eligibility

- Rules are ambiguous: Unit with only full time unmarried students not eligible for tax credits
- The following students do NOT disqualify the unit:
  - Student receiving assistance under Title IV of SSAct-TANF
  - An individual in a state or local job training program
  - Unit entirely occupied by full time students who are single parents and no one is a dependent of anyone else
  - Unit entirely occupied by full time married students who file joint tax return
  - Students who were formerly under foster care
- Owner concern about recapture of credits—will be cautious in admitting full time unmarried students
Rents

- **Income-based rents?** NO, LIHTC gross rents are flat rents based on AMI, not individual tenant income. Rent not adjusted if income drops.
- For restricted units, flat rents set @ either 30% of 50% of AMI, or 30% of 60% of AMI, w/an assumed family size of 1.5 persons/BR (one person for 0-BR unit)
  - See sample rent calculation sheet
  - Rents can increase with changes in AMI, not decrease
  - Most ELI tenants have rental subsidies (such as Section 8 Vouchers), with contributions determined under rent subsidy rules.

Rents, Continued Occupancy & Utility Allowance

- **Recertification:** Income: Annually except not required if 100% LIHTC property with restricted rents; Student Status: Annually
- In 9% credit units, **tenant right to continued occupancy unaffected** by increases in income until 140% of income limit (i.e., 140% of 50% AMI, or 140% of 60% AMI)
- **Utility Allowance:** LIHTC rents are gross rents, for tenant-paid utilities, tenant must receive utility allowance, usually based on local PHA’s utility allowance for comparable Section 8 Voucher units
- **Mandatory and other charges:** include in rent
### Grievance Procedures

- None required by statute or regulation
- State Regulatory Agreement?

### Evictions

- **Good cause required** at end of lease term?
  - State court cases under statute or due process (governmental action?)
  - Confusion: IRS guide for Form 8823
  - Terms of state’s Regulatory Agreement or required lease addenda? Owner Certificate of Compliance
  - Tenant not on notice therefore not aware of right

- **Notice:**
  - No federal statutory or regulatory requirements re length of notice and/or content
  - Due process or state rules (if cause required)?
- **Pre-judicial administrative review?**: None
Tania

Facts:
- Tania lives in an LIHTC unit.
- Tania has a restraining order against her ex-boyfriend, Reuben, who has been stalking her.
- One day, Reuben kicked in the door at Tania’s apartment. She reported the incident to her property manager.
- The property manager later gave Tania a 30-day eviction notice for damages caused by her “guest.”

Poll: The property manager’s actions may violate which of the following?

Takeaway Points

- LIHTC housing is unique because it is run as a tax program, not a housing program
  - As a result, there are few program rules that focus on resident concerns and issues
- Important to get to know owner/manager, because most policies are discretionary
- Important to get to know Housing Finance Agency compliance staff
- Advocates can comment on state’s Qualified Allocation Plan to improve policies regarding DV
- Poll
Why is Rural Development (RD) Multifamily Housing Important?

- Domestic and sexual violence advocates may encounter RD (Section 515) rental housing because:
  - It is often the only housing survivors in rural areas can afford on their own.
  - There are about 440,000 Section 515 rental units nationwide.
  - A few new units are funded and built each year. May be combined with LIHTC.
  - Housing is built in towns with no more than 20,000 in population or, if within a Standard Metropolitan Area (SMA), no more than 10,000 in population and rural in character.
  - Some RD units are now located in areas outside these limits because of population shifts.
How the Program Works

- Section 515 direct loan program: almost all with shallow subsidy to reduce rents.
  - Many also have a rental subsidy, such as Rental Assistance, project-based Section 8 and tenant-based vouchers.
  - Program first created to expand affordable senior housing to rural areas (modeled after HUD 202 program).
- Section 521 rental assistance only for RD housing.
  - About 70% of all the 515 units have Rental Assistance.
- Section 538 loan guarantee program for RD rental housing.
- There are other RD housing programs, including farmworker and single family programs.

Ownership, Use Restrictions and Who is Involved

- **Ownership**: Mostly profit-motivated or limited-partnerships, some nonprofits and public agencies.
- **Use Restrictions**: No use restrictions for pre-1979 developments; post 1979, 20-year use restrictions, post 1989 use restrictions for term of loan. All have prepayment restrictions.
- **Who is involved**: Rural Development (RD) part of U.S. Dept. of Agriculture, owner, management company (may be same as owner or separate).
  - RD has state and local offices, [http://offices.sc.egov.usda.gov/locator/app?state=us&agency=rd](http://offices.sc.egov.usda.gov/locator/app?state=us&agency=rd)
Key Components

- **Key Regulatory Features**: Regulatory Agreement between RD and owner; regulations at 7 C.F.R. Part 3560, RD approved lease, Handbooks, letters, etc.
- **Where is this housing located?**
  - Rural areas.
  - [http://rdmfhrentals.sc.egov.usda.gov/RDMFHRentals/select_state.jsp?home=NO](http://rdmfhrentals.sc.egov.usda.gov/RDMFHRentals/select_state.jsp?home=NO)
- **Determining What Kind of Housing is Involved**: signage, lease, rent level, check the website listed above, get list from RD office, ask management.

Admissions and Eligibility

- **Income**: 7 C.F.R. §§ 3560.152 and 3560.11 (less than 80% of AMI + $5500); RD Asset Mgmt Hbk, HB-2-3560, ¶6.3.
- **Citizenship or qualified alien**: Not a criterion: See Note at end of 7 C.F.R. § 3560.152.
- **Preferences**: Admission priorities for very low-, low- and then moderate-income applicants; elderly for restricted developments.
- **Screening**: Owner discretion for criminal history
- **Procedural protections**: Denial notice must have certain form and information and hearing rights.
**VAWA 2013**

**VAWA 2013 has extended coverage to the following RD/RHS programs:**

- Section 515 rural rental housing (42 U.S.C. § 1485).
- Section 514 and 516 Farm Labor housing (42 U.S.C. §§ 1484 and 1486).
- Section 533 Housing Preservation Grant Program (42 U.S.C. § 1490m)
- Section 538 guaranteed multi-family rental housing (42 U.S.C. 1490p–2).

  - RHS has not yet published any regulations extending VAWA to its program.
  - Existing leases have some VAWA protections mentioned.

---

**Jan**

**Facts:**

- 25 years ago, Jan was convicted of felony assault in an incident involving her abusive husband. She was released from prison on a habeas petition asserting battered women’s syndrome.
- Jan applied for a Rural Development unit and included letters of support from her employer, a DV agency, and a letter from the dept. of corrections to explain her conviction.
- The owner denied Jan’s application due to her conviction, and the owner failed to mention anything about the supporting documents Jan provided.
- What could you do on Jan’s behalf?
### Rents

- **Market rent (note rent)**
- **Basic rent**
  - Tenant pays the greater of basic rent or 30% of household income.
- **Income-based rent if there is a deep rental subsidy**
- **Annual income and exclusions and deductions.**
  - Same as the project-based Section 8.
- **Annual rent recertification.**
- **Utility allowance for tenant-paid utilities impacts income-based rents for those subject to rent in excess of basic rent or receiving a rental subsidy.**
  - Utility allowance reviewed annually by owner and RD.

### Rents & Tenant Grievance and Appeals

- **Rents, continued:**
  - Tenant may grieve individual rent calculation.
  - Notice and comment on owner proposal to increase project-wide rents except in developments with 100% RA.
- **Grievance hearing:** For owner action or inaction in accordance with lease, occupancy rules or RD regulations. Two step process:
  - Informal meeting with owner.
  - Grievance hearing.
- **Lease:** Owner must use lease approved by RD, required lease language: DV is a material lease violation & survivor remains.
### Lease Language

- “All leases, including renewals, must include the following language:
  - . . . It is further understood that domestic violence will not be tolerated on Rural Housing properties, and that such action is a material lease violation. All perpetrators will be evicted, while the victim and other household occupants may remain in the unit in accordance with eligibility requirements.”

### Evictions & Termination of Rental Assistance

- **Good cause required.**
  - Material noncompliance with lease, occupancy rules or other good cause.
- **Right to notice and right to cure.**
- **Notice must set forth good cause.**
- **No right to grievance hearing in eviction cases.**
- **No preemption of state law.**
- **Termination of rental assistance prior to eviction.**
  - Not allowed; Tenant entitled to Tenant Grievance and Appeal.
Tiffani

**Facts:**
- Tiffani and her husband rented a Section 515 RD unit together.
- Tiffani's husband attacked her in the unit, and she later obtained a restraining order against him.
- After Tiffani notified the property manager of the restraining order, she received a 24-hour eviction notice stating that the property's “zero-tolerance against violence” policy applied to her situation.
- Poll: The property manager’s actions may violate which of the following?

Takeaway Points

- Tenants rights’ in RD housing are substantial.
- Domestic violence is material lease violation and the perpetrators will be evicted.
- It may be the only affordable housing in rural areas.
- It is important to make connections with owners of such housing and RD staff.
  - Advocacy to verify that leases with language that DV is a material lease violation and that all perpetrators will be evicted is in use at all Section 515 developments.
- VAWA 2013 may apply.
  - Parts may be self executing.
  - Be alert for regulations or other RD notices about applicability.
Contact Information

For assistance on housing issues related to domestic violence, dating violence, sexual assault and stalking:
Karlo Ng, kng@nhlp.org, (415) 546-7000 x. 3117

For assistance on RD issues:
Gideon Anders, ganders@nhlp.org
(415) 546-7000 x. 3103
http://www.nhlp.org/OVWgrantees

This project was supported by Grant No. 2008-TA-AX-K030 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.