

# HOUSING JUSTICE

National Housing Law Project

Newsletter June/July 2012

## Low-Income Housing Tax Credit (LIHTC) Properties: An Overview for Advocates

Many advocates have questions regarding the Low Income Housing Tax Credit Program (LIHTC), which finances construction and rehabilitation of affordable housing. The program has funded approximately 2.4 million units. Given the program's size, a number of survivors of domestic and sexual violence likely reside in LIHTC properties. Advocates therefore may have questions regarding protections available to survivors who face evictions from LIHTC units that are related to the perpetrator's misconduct. Further, because the LIHTC program is one of the country's largest sources of affordable housing units, survivors relocating from shelters or transitional housing may be interested in applying for these units.

This article highlights some of the common issues that arise in housing that is *only* assisted with tax credits and does not receive additional federal rental housing subsidies. Unfortunately there are few rules and regulations protecting LIHTC applicants and tenants. For example, the housing protections of the Violence Against Women Act (VAWA) apply to the public housing and Section 8 programs, but not the LIHTC program. However, LIHTC funds often are used with other federal subsidies, such as Section 8 vouchers. If these other rental subsidies are used, the rules that govern these subsidies most likely will provide the greatest benefit for tenants or applicants. Thus, a Section 8 voucher holder applying to or living in LIHTC housing would be entitled to VAWA's protections

against denials of housing and evictions.

Advocates should contact the National Housing Law Project if they have questions regarding the types of subsidies a project is receiving.

### Who is Eligible?

The LIHTC statute contains only a few eligibility requirements for families, which are discussed in detail below.

**Income Eligibility:** Applicants for LIHTC units often must meet income restrictions. Owners can restrict at least 20% of a project's units for households with incomes at or below 50% of the area median income (AMI), or they can restrict at least 40% of units for households with incomes at or below 60% of AMI.

Significantly, a state tax credit agency may impose additional affordability requirements on owners as a condition of receiving tax credits. A number of states have done so, and many LIHTC properties have designated all of their units for low-income households. Once an owner has chosen the income restrictions it will abide by, it must follow those restrictions throughout the term of the LIHTC compliance period, which is a minimum of 15 years.

**Student Eligibility:** The rules defining the eligibility of students seeking to live in LIHTC housing are complex, inconsistent and not necessarily rational. IRS rules provide that if all of the persons seeking to live in the unit are students, they must fall within a defined exception, or the unit is out of compliance. Advocates with questions regarding student eligibility in federally subsidized housing

*(Continued on page 2)*

### IN THIS ISSUE

**HUD Provides Guidance on  
Tenant Contact Information**

**Advocates Await Further Action on  
Violence Against Women Act**

(Continued from page 1)

programs should contact NHLP.

#### **Nondiscrimination Against Section 8 Voucher**

**Holders:** The LIHTC statute includes a provision prohibiting discrimination against Section 8 voucher holders. Accordingly, LIHTC owners cannot reject families based solely on the fact that they have a Section 8 voucher. Such a protection can be vital for applicants who have difficulty finding a landlord who will accept their voucher.

#### **What are the Rents?**

LIHTC rents are set at a flat rate based on the level of affordability and bedroom size of the unit. Individual rents are based on the level of rent restriction the owner has chosen. Tenants in any of the restricted units pay 30% of the income limit (50% or 60% of AMI). The owner then assumes a family size of 1.5 persons per bedroom. This is a flat rent and is *not* based on the family's actual income. For example, assume that LIHTC units in the city of St. Louis are restricted to families with incomes equal to or less than 60% of AMI. Based on 30% of 60% of the AMI for the area, monthly rent for a family of three may be up to \$964.

Each year, the Department of Housing and Urban Development determines the AMI, and each state issues the maximum allowable rent for a unit based on that data. However, an owner is not required to set rent that high. Further, an owner must comply with state and local law, as well as any lease provisions, regarding rent increases.

LIHTC rents are gross rents, meaning that they include mandatory fees and utilities. Therefore, if tenants pay for any utilities, the owner must establish a utility allowance. IRS regulations provide for a number of different methods for determining utility allowances. The utility allowance reduces the maximum rent that the owner may charge. In the above example, if the rent is \$964 and the utility allowance is \$75, the owner cannot charge a rent that exceeds \$889. Pursuant to a change in a project's utility allowance, all rents must be changed accordingly within 90 days. The owner must review utility allowances annually.

#### **Are there Tenant Protections in the Event of an Eviction?**

Owners of properties funded under the LIHTC program must have good cause to evict tenants. This rule was first clarified statutorily in 1990. However, many states did not implement this rule for well over a decade. In July 2004, the IRS issued a Revenue Ruling that confirmed that the statute requires properties to have a recorded covenant that prohibits evictions without cause. This requirement provides an important tool in ensuring that low-income tenants can remain in their homes. Advocates should ensure that their state LIHTC properties are in compliance with these requirements.

As mentioned above, VAWA's housing protections for domestic violence survivors do not apply to LIHTC units unless a tenant is renting a LIHTC unit with a Section 8 voucher. However, LIHTC properties are subject to the Fair Housing Act, which prohibits discrimination on the basis of sex. Advocates have successfully challenged evictions of domestic violence survivors from LIHTC properties by using the Fair Housing Act. ■

#### **Available Online: Free Housing and Domestic Violence Manual**

The National Housing Law Project is pleased to announce the publication of "Maintaining Safe and Stable Housing for Domestic Violence Survivors: A Manual for Attorneys and Advocates." The manual focuses on the rights of domestic violence survivors who are facing loss of housing, who need to improve their housing safety, or who need to relocate. Topics include changing the locks; breaking the lease; defending against evictions and subsidy terminations; housing discrimination; reasonable accommodations requests for survivors with disabilities; and housing rights under the Violence Against Women Act.

The Manual is available for free at <http://www.nhlp.org/node/1745>

## HUD Provides Guidance on Tenant Contact Information

The Department of Housing and Urban Development (HUD) has issued a new notice emphasizing that tenants in its housing programs must be given the option of providing contact information for a person or organization that can assist with resolving tenancy issues. This may be helpful for domestic violence survivors who want to provide contact information for a domestic violence agency or friend who can be contacted if the survivor needs help with a housing issue.

HUD's notice states that subsidized housing providers must give tenants the option to list an individual or organization that may be contacted to assist with tenancy issues. The tenant can designate the reasons for which the housing provider can reach out to the contact, such as an emergency, termination of rental assistance, eviction from the unit, late payment of rent, or if the housing provider is unable to reach the tenant. The housing provider must keep the contact information confidential.

Advocates working with domestic violence survivors applying for or living in subsidized housing should encourage them to list an agency or individual who can assist the survivor with tenancy issues. For example, survivors sometimes face termination of their housing subsidies when they are forced to flee their subsidized units for extended periods of time. By designating a domestic violence agency or individual who can be contacted if the housing provider is unable to reach the survivor, the survivor may be able to avoid unnecessary terminations of assistance. As another example, a survivor may be experiencing depression or post-traumatic stress disorder, making it difficult for her to interact with her housing provider. In these cases, the survivor should list an individual or agency that the housing provider can contact to discuss issues relating to the survivor's tenancy.

For more information, see HUD Notice PIH 2012-22, available at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/administration/hudclips/notices/pih](http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/notices/pih). ■

## Advocates Await Further Action on Violence Against Women Act

The House of Representatives recently passed H.R. 4970, its version of the Violence Against Women Act (VAWA) reauthorization. Like the VAWA bill passed by the Senate in April, the House bill would expand housing protections for survivors of violence. Both bills would extend VAWA's housing protections to sexual assault survivors and would cover additional federally subsidized housing programs.

However, there are key differences between the bills. Specifically, the House bill does not include language from the Senate bill that would require survivors to be notified of their VAWA rights upon eviction. Further, the Senate bill would mandate that subsidized housing providers adopt policies to address emergency relocation for survivors, while the House bill would make adoption of these policies voluntary. Outside of the housing context, the House bill omits several of the Senate provisions regarding protections for lesbian, gay, bisexual, and transgender individuals, American Indians, and battered immigrants.

Both bills now must be brought to conference so that members of Congress can agree on a bill to send to the President. ■

---



---

### For technical assistance or requests for trainings or materials, please contact:

Meliah Schultzman, [mschultzman@nhlp.org](mailto:mschultzman@nhlp.org)  
 Catherine Bishop, [cbishop@nhlp.org](mailto:cbishop@nhlp.org)  
 National Housing Law Project  
 703 Market Street Ste. 2000  
 San Francisco, CA 94103  
 Phone: (415) 546-7000, x. 3116  
<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/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.*