

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



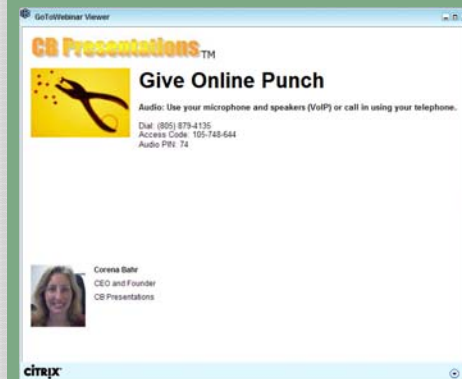
GIDEON ANDERS
CATHERINE BISHOP
NATIONAL HOUSING LAW PROJECT
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HOUSING JUSTICE

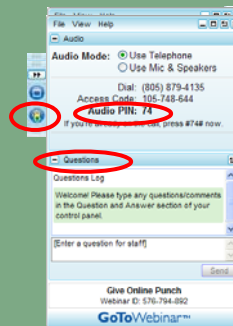
National Housing Law Project

GoToWebinar Interface

1. Viewer Window



2. Control Panel



Housekeeping

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- 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

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- 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?

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

Why Does This Matter? (cont'd)

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- 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

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Key Features of the LIHTC Program

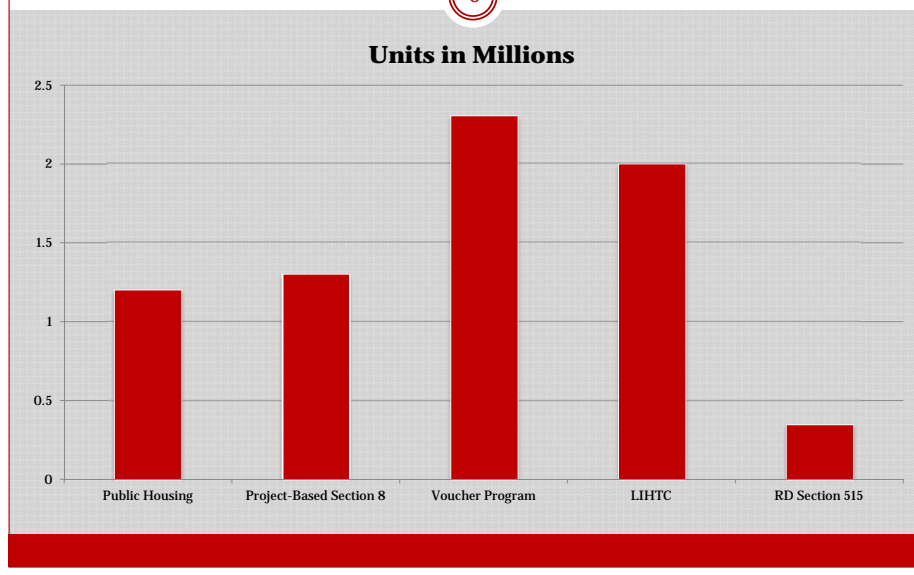
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- It is tax policy, not a “housing program”
- LIHTC is the largest program funding new multifamily housing and is growing
- Income eligibility generally higher than HUD programs
- Rents NOT directly tied to tenant’s income
- Lease with specific provisions 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

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How the Program Works

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- **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

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- **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)

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- State Housing Finance Agency (HFA) develops a QAP and reviews annually; properly noticed public hearing and public comment
 - QAPs from 2000-2013 available at www.novoco.com/low_income_housing/lihtc/qap_2013.php
- *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

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- 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

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- **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.
- **Finding Out Where this Housing Is Located in Your Community:** available at:
<http://www.preservationdatabase.org/datasources.html>
www.huduser.org/datasets/lihtc.html or
www.novoco.com/low_income_housing/resources/maps_data.php

Key Components

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- **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

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- 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

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- **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

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- **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

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- **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

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- **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

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

Evictions

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- **Good cause required at end of lease term?**
 - Yes, Rev. Rul. 2004-82 and Rev. Proc. 2005-37
 - 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

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- **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

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- **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**

Rural Development (RD) Multifamily Housing

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Why is Rural Development (RD) Multifamily Housing Important?

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- **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

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- **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

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- **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>

Key Components

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- **Key Regulatory Features:** Regulatory Agreement between RD and owner; regulations at 7 C.F.R. Part 3560, RD approved lease, Handbooks, letters, etc.
 - www.rurdev.usda.gov/RegulationsAndGuidance.html.
- **Where is this housing located?**
 - Rural areas.
 - <http://rdmfhrentals.sc.egov.usda.gov/RDMFHRentals/selectstate.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

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- **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

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- **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

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- **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

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- **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

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- **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

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- **“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.”
 - ✦ HB-2-3560, Attachment 6-E (02-24-2005) (at page 3 of 5).

Evictions & Termination of Rental Assistance

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- **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

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- **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

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- **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

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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

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<http://www.nhlp.org/OVWgrantees>

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