

# HOUSING JUSTICE

National Housing Law Project

Newsletter June 2013

## **Working with State Agencies to Improve Survivors' Access to Low-Income Housing Tax Credit Housing**

The Low-Income Housing Tax Credit (LIHTC) program is currently the country's largest affordable housing program. Since the inception of the program, more than two million units financed with LIHTCs have been created, with about 100,000 units annually added. Given the large number of LIHTC units on the market, it is critical to ensure that domestic violence survivors are able to access this housing. There is a lot that advocates can do locally to improve survivors' access to these housing units by working with state financing agencies through the Qualified Allocation Plan (QAP) process. This article will provide an overview of the QAP process and describe how advocates can use that process as an important policy planning tool.

### **What is the Low-Income Housing Tax Credit program?**

Administered by the Department of Treasury's Internal Revenue Service, the Low Income Housing Tax Credit Program (LIHTC) provides tax incentives, written into the Internal Revenue Code, for developers to create affordable housing. The tax credits are provided to each state on a per-capita basis. Each state is then left to manage the program, with some broad outlines of program requirements from the federal government. Therefore, each state has a designated state agency responsible for federal tax credit allocation and has adopted a Qualified Allocation Plan (QAP) to describe the priorities and standards for the awards.

In exchange for tax credits, investors put up cash to support development or rehabilitation of a LIHTC property. Two types of tax credits are available: one at 9% of qualified basis, which is competitively allocated by a state agency, and the other at 4% of qualified basis, which comes with certain bond financing and is usually not competitive. The 9% credit supports about 70% of the cost of the low-income units and 4% credits support about 30% of the cost. Tax credits are received annually for ten years, but the properties remain subject to the rent and use restrictions for much longer, typically at least 30 years.

### **How affordable are LIHTC units?**

On their own, tax credit subsidies provide a moderate level of affordability through rent restrictions. However, many units or tenancies are subsidized through additional sources of federal or state funding, allowing for deeper affordability to lower-income families. Under federal law, the LIHTC program targets applicants with an income level (e.g., 50% or 60% of Area Median Income) that is much higher than most Department of Housing and Urban Development (HUD) or Rural Housing Service programs, and requires rent restrictions accordingly. Nevertheless, some states have imposed deeper income targeting and resulting lower rent requirements on certain LIHTC developments. Furthermore, many LIHTC residents, most of whom are extremely low-income, benefit from additional forms of rental assistance, such as project-based Section 8 or vouchers. Whatever their income targeting and rent restrictions, LIHTC

*(Continued on page 2)*

*(Continued from page 1)*

units provide below-market rents for hundreds of thousands of families, including families who are survivors of domestic violence.

### **Who administers the LIHTC program?**

In most states, the LIHTC program is administered by the state housing finance agency. The LIHTC program has fewer federal regulatory requirements governing the landlord-tenant relationship than most other affordable housing programs. For example, LIHTC has far fewer federal requirements concerning applications, occupancy, or evictions, but some requirements may be imposed by the state agency administrator or state law.

### **What is a Qualified Allocation Plan (QAP)?**

A state housing finance agency utilizes the Qualified Allocation Process (QAP) to establish the criteria used to select who will be awarded tax credits. These criteria include those that are appropriate to local conditions, but consider projects that:

1. serve the lowest income tenants,
2. do so for the longest period of time, and
3. are located in “qualified census tracts” and contribute to a community revitalization plan.

Furthermore, federal law requires a QAP to include the following ten selection criteria:

1. tenant populations with special housing needs;
2. project location;
3. housing needs characteristics;
4. project characteristics, including whether the project includes the use of existing housing as part of a community revitalization plan;

5. sponsor characteristics;
6. public housing waiting lists;
7. tenant populations of individuals with children;
8. projects intended for eventual tenant ownership;
9. the energy efficiency of the project; and
10. the historic nature of the project

Many state QAPs include additional state-created criteria or preferences, as well as those specified by federal law.

A QAP may prioritize certain types of projects through different mechanisms, the most common of which are preferences or set-asides. With preferences, an agency awards extra points to proposals that meet certain characteristics; whereas set-asides are funds specifically reserved for specific kinds of projects. For example, federal law requires a set aside of at least 10 percent of the state’s allocation for non-profit sponsors; state agencies may create additional set-asides for specific kinds of housing, such as housing for special needs populations, or rural properties, or to preserve other kinds of affordable housing at risk of loss or deterioration.

In addition, each QAP must contain procedures for the agency to monitor the performance of owners receiving the credits during the restricted use period. Some states also issue state regulations or policies, as well as unique forms for owners to report specific information to assist in the monitoring process.

QAPs also must be updated on an annual basis, using a public hearing that is properly noticed. Because these notice periods are not uniform, advocates should check with their state agency to determine when the QAP will be amended and the applicable notice and comment process for public participation. Furthermore, the QAP typically lists or references all deadlines, application fees, restrictions,

*(Continued on page 3)*

(Continued from page 2)

standards and other requirements with which a project sponsor must comply.

### **How has the QAP been used to increase affordable housing available to survivors?**

States have used the selection criteria to increase affordable housing units for survivors. For example, some states specifically define “tenant populations with special housing needs” to include victims of domestic violence. Other states define the term “tenant populations with special needs” broadly, so as to implicitly include a wide range of different groups. Furthermore, many states address the special needs population by requiring that in order to qualify for a preference or set-aside, a certain percentage of the units must be available to that population. In addition, some LIHTC developments have units specifically set aside for domestic violence survivors.

### **How can advocates use the QAP process to improve protections for survivors?**

**State protections.** Advocates can use the QAP process to advocate for state policy where federal protections are not adequate. For example, while the Violence Against Women Reauthorization Act of 2013 (VAWA 2013) clarifies that applicants and tenants of LIHTC housing cannot be denied or evicted because of domestic violence committed against them, there is no specific requirement that this protection be set forth in each owner’s tenant selection plan or in the lease. Since the lease is the document most often used by the parties and courts to resolve eviction disputes, it is important for the lease to clarify that good cause is required for eviction, and that being a victim of domestic violence does not constitute good cause. Before VAWA 2013, advocates in Pennsylvania worked with their state financing agency to obtain protec-

### **For More Information on LIHTC and QAPs**

NHLP Newsletter (June/July 2012) *Low Income Housing Tax Credit (LIHTC) Properties: An Overview for Advocates* <http://nhlp.org/files/June%20July%202012%20Newsletter.pdf>

NHLP Training (Dec. 2012) *Low-Income Housing Tax Credit and Rural Housing: A Basic Overview for Advocates* <http://www.screencast.com/t/UJGvqEku>

tions for residents who were threatened with eviction because of domestic violence. The state’s QAP now provides that owners must certify and provide in leases that LIHTC residents will only be evicted for good cause and that domestic violence alone does not constitute good cause for eviction. Similar provisions are likely needed in most states.

**Compliance plans and forms.** A QAP also includes the state’s obligations to monitor the owner’s performance for compliance with all program requirements. It is, therefore, important to review any plans that a state may develop regarding compliance, rules or regulations and forms for owners to report compliance to the agency or for owners, managers and tenants to use with respect to specific occupancy issues.

In this context, advocates have had success in getting state agencies to change policies that would have had a negative impact on survivors of domestic violence. For example, in Oregon, advocates objected to a form requiring a married applicant seeking housing without his or her spouse to file for separation or divorce and urged, in instances of domestic violence, that a head of household be able to verify income through a declaration. The agency no longer provides the objectionable form and the proposed form provides that an individual may self-certify separation/estrangement at application or for continued occupancy for the purpose of verifying income, assets, etc.

(Continued on page 4)

(Continued from page 3)

Other states have included important protections for survivors in their compliance plans. For example, Mississippi permits an applicant who is a married survivor to establish her permanent separation from the abuser by producing a copy of a legal restraining order or documentation that a prospective resident has experienced domestic violence or a statement from a counselor that the separation is permanent. The State of Montana provides, consistent with state law, that a change in family composition may be requested at any time by a domestic violence survivor.

**Implementing VAWA 2013.** It will be important for advocates to use the QAP process, or any other available state policymaking avenue, to get owners to implement important protections provided by VAWA 2013 during the interim period before the Department of Treasury issues any formal regulations or other guidance for VAWA 2013. For instance, VAWA 2013 provides critical new protections for survivors, mandating that the federal agencies administering the housing programs covered by the law adopt a model emergency transfer plan to be used by owners and managers of LIHTC units and requiring the Department of Housing and Urban Development (HUD) to develop a notice of VAWA housing rights for survivors. Owners and managers of LIHTC units must provide this notice to all applicants and tenants at the time an applicant is denied residency; at the time the individual is admitted; and with any notification of eviction or termination of assistance. Because development of these plans and notices may not occur right away, advocates should consider engaging state agencies through the QAP or other process to provide immediate protections to applicants and tenants, such as required lease addenda or tenant selection plans.

**What are practical tips for advocates preparing for the QAP process?**

Due to its central role in allocating tax credits, the QAP can be an important policy planning document over which domestic violence advocates can exert influence. To prepare for the QAP process, advocates should:

- assess the housing needs of low-income families who are survivors of domestic violence,
- work with other advocates to determine what policies are necessary,
- determine the notice and comment periods for the state's QAP revisions,
- develop a strategy, which may include:
  - advocating for selection criteria for LIHTC applications that will provide for developing affordable housing that meets those needs,
  - working to improve the occupancy policies governing existing LIHTC housing so as to improve the rights of applicants and current occupants who are domestic violence survivors, and
  - working with housing providers to seek tax credits for units that will serve survivors of domestic violence.

For more information, please contact the National Housing Law Project. ■

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

Karlo Ng, [kng@nhlp.org](mailto:kng@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. 3117  
[www.nhlp.org/OVWgrantees](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.*