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CITIZENS WITH DISABILITIES  
(CCD) HOUSING TASK FORCE

## Using the Low Income Housing Tax Credit Program to Create Affordable Housing for People with Disabilities

By Emily Cooper and Ann O'Hara

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Call your Members of Congress today and let them know how important the Section 811 program is to people with severe disabilities.

### Editorial

#### 50 Percent Cut Proposed for the Section 811 Program!

Disability advocates were in shock when HUD's FY 2006 budget proposal submitted to Congress included a drastic 50 percent cut in the Section 811 Supportive Housing for Persons with Disabilities program. The Bush Administration proposes to slash the Section 811 budget by reducing funding to \$120 million from \$238 million enacted in FY 2005. Most critically, the budget proposes to completely eliminate **all** funding for new unit production in FY 2006 by zeroing out the capital advance component of the program.

This unprecedented cut ends a 30+ year federal commitment to support the production of new affordable and accessible housing targeted to people with severe disabilities. It also calls into question the Administration's actual commitment to people with disabilities and to the goals of its *New Freedom Initiative* – created by the Administration in response to the community integration mandates affirmed in the U.S. Supreme Court's *Olmstead* decision.

Many readers of *Opening Doors* know Section 811 as the program that provides affordable housing for the most

vulnerable people in our society – that is people with physical or developmental disabilities, or people with severe mental illness who are 18 years of age or older and have very low incomes (at or below 50 percent of the area median income). Section 811 housing is developed and owned by mission driven non-profit organizations that make a commitment to the project for 40 years – 25 years longer than developers of the federal Low Income Housing Tax Credit program, the topic of this issue of *Opening Doors*.

These proposed cuts are not the entire story. Of the \$120 million that the Administration did request for Section 811, \$80 million is needed to renew Section 811-funded vouchers that HUD began distributing to PHAs (and a few non-profits) beginning in 1997. It has been clear for years that using Section 811 to fund vouchers would slowly but surely eliminate funding for new housing development. It is very doubtful that Congress intended for the Section 811 program to gradually disappear when they authorized the voucher component of the program back in 1992.

We seriously doubt that Congress intended valuable Section 811 voucher funding to simply go to people who do not necessarily have severe disabilities but

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# Opening Doors

A housing publication for the disability community

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The **Technical Assistance Collaborative, Inc.** is a non-profit organization that provides state-of-the-art technical assistance and training to housing and human service organizations so that they may achieve positive outcomes in their work on behalf of people who are disadvantaged and/or disabled. For more information, please contact the Technical Assistance Collaborative, Inc., 535 Boylston Street, Suite 1301, Boston, Massachusetts 02116. Phone/TTY: 617-266-5657 or Fax: 617-266-4343 or email: info@tacinc.org.



The **Consortium for Citizens with Disabilities (CCD)** is a national coalition of consumer, advocacy, provider, and professional organizations who advocate on behalf of people of all ages with disabilities and their families. CCD has created the CCD Housing Task Force to focus specifically on housing issues that affect people with disabilities.



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who happen to be on PHA waiting lists – or, for that matter, to non-disabled people on PHA waiting lists. Unfortunately, HUD's complete neglect of the 811-funded voucher program means that precious Section 811 funding may have been diverted (whether intentionally or not) to people who are not disabled at all.

Perhaps the final straw in the Section 811 budget picture is the fact that the Administration's budget requested funding of over \$700 million for the Section 202 Supportive Housing for the Elderly program. Section 202 and Section 811 have been "companion" supportive housing programs for many years, dating back to the pre-1990 days of the "old" 202 Supportive Housing for Persons with Disabilities program. Until now, when the 202 budget was increased, the Section 811 budget was increased proportionately. Both programs also took equally severe budget cuts in the mid-1990s.

When asked recently at a Congressional hearing to justify the Section 811 cut, HUD Secretary Jackson said that HUD's priority was to save the Section 8 voucher program. But HUD's budget request for vouchers in 2006 will not fund all of the vouchers (including disability vouchers) authorized by Congress, let alone new vouchers for people with disabilities on waiting lists.

There are no winners here – only more low-income people with disabilities without affordable and accessible housing. Disability advocates must fight these cuts to the Section 811 program and fight the clear message behind these cuts. Section 811 is a symbol of the federal government's commitment to affordable, accessible and integrated housing for people with severe disabilities – people who would otherwise end up in institutions, nursing homes, substandard board and care homes, and on the streets of our cities.

Call your members of Congress today and let them know how important the Section 811 program is to hundreds of thousands of people with severe disabilities who need supportive housing. If Congress doesn't hear from you, they will think that housing for people with disabilities does not matter and that no one cares about the Section 811 program. Request that Congress appropriate at least \$249 million in new Section 811 funding for 2006 – which would restore the program to 2004 funding levels. And do it today!

# Using the Low Income Housing Tax Credit Program to Create Affordable Housing for People with Disabilities

## Introduction

Since it was created in 1986, the Low Income Housing Tax Credit program (LIHTC) has become the largest single source of funding for the production of rental housing for low-income families and individuals. Over the years, the LIHTC program has produced over 1.5 million affordable housing units, and provided housing for approximately 3.5 million people – including low-income people with disabilities.<sup>1</sup>

The LIHTC program can be a valuable tool to finance the creation of permanent housing for people with disabilities with extremely low incomes if – *if* being the critical word – it is used in combination with other government housing programs. Other resources, and in particular rent subsidies, are essential to ensure that LIHTC financed rental units are affordable to people with disabilities whose incomes are at the Supplemental Security Income (SSI) level. In Washington State, Connecticut and Massachusetts, disability advocates and affordable housing officials have worked in partnership to develop financial models using the LIHTC program as a core element to create affordable rental housing for chronically homeless people and other very low-income people with disabilities.

Disability advocates in these states have learned that the LIHTC program is also one of the most complex affordable housing programs ever created by the federal government. The program's basic approach – to use federal income “tax credits” to generate funding for affordable housing development – is also very different from other government housing programs that provide funding more directly. Nevertheless, an increasing number of non-

profit housing organizations within the disability community are mastering the details of LIHTC housing development.

Certain features of the LIHTC program are very compatible with housing strategies that benefit people with disabilities. For example, owners of LIHTC properties cannot discriminate against households that will use a Section 8 Housing Choice Voucher to subsidize their rent – a requirement that may not be familiar to disability housing advocates. Another positive feature of the program is that a minimum of 10 percent of the LIHTC allocated to a state must be awarded to non-profit housing providers.

Fortunately, housing advocates for people with disabilities do not need to become LIHTC experts in order to understand how the program works. Once the disability community understands the “basics” of this program, they can begin to advocate for strategies that use the LIHTC program in combination with U.S. Department of Housing and Urban Development (HUD) rent subsidy programs such as Section 8 or Shelter Plus Care. These strategies can create housing that is very affordable for people with disabilities receiving federal SSI benefits of less than \$600 per month.

Part One of this issue of *Opening Doors* provides basic information on the LIHTC program. At first glance, the program description may discourage disability advocates seeking to serve the lowest-income people. But read on! This basic information is very important for advocates who want to successfully engage state housing officials administering the LIHTC program on behalf of the federal government.

More information on the state's role in the LIHTC program is described in Part Two of this issue. Part Three includes

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<sup>1</sup> NAHRO Monitor: Special Edition. National Association of Housing and Redevelopment Officials. Washington, DC. January 2004.

specific approaches that can help people with disabilities benefit from the LIHTC program, including strategies that combine the LIHTC program with other federal housing programs to produce rental housing units affordable to people with disabilities with the lowest incomes.

## Part One – The Basics of the LIHTC Program

**T**he federal government created the LIHTC program to encourage the development of new mixed-income rental housing that would benefit low-income households. At the federal level, the program is not administered by HUD, but rather by the Internal Revenue Service (IRS) within the Department of Treasury – an agency not typically associated with affordable housing! Each year, the LIHTC program produces approximately \$6 billion of private investment in affordable housing. According to the National Council of State Housing Agencies, the LIHTC program helped create over 70,000 housing units for low-income families and individuals in 2003.<sup>2</sup>

Housing developed under the LIHTC program must be maintained as affordable rental housing for at least 15 years. Many types of rental housing are eligible including:<sup>3</sup>

- Multifamily rental housing;
- Mixed-use projects that include both rental housing and commercial space;
- Single Room Occupancy (SRO) housing; and
- Scattered-sites that can be “bundled together” as one project.

As mentioned above, the LIHTC program encourages the development of rental housing by non-profit organizations through a 10 percent set-aside policy. The program also contributes to the supply of accessible housing needed by people with

mobility or sensory impairments. Specifically, newly constructed or substantially rehabilitated properties financed with LIHTC are required have 5 percent of the units accessible to people with mobility impairments and an additional 2 percent of the units accessible to people with sensory impairments.

## How Does the LIHTC Program Work?

The LIHTC program works through five basic and sequential steps:

**Step One:** Each year, the IRS allocates a specific dollar amount of LIHTC – often simply referred to as “tax credits” or “housing credits” – to each state.

**Step Two:** Through a competitive process, the state awards these tax credits to specific affordable housing projects proposed by developers who must agree to meet LIHTC “affordability” requirements for a 15-year compliance period.

**Step Three:** Affordable housing developers awarded these tax credits then proceed to sell them to private investors – such as banks, corporations, etc. The investors use the credits to reduce the amount of federal income tax they owe.

**Step Four:** The developer then uses the money received from the sale of the tax credits – referred to as “tax credit equity” – to help finance the project. LIHTC projects can be either new construction of rental housing or rehabilitation of existing housing.

**Step Five:** Once a LIHTC property is completed, and for the duration of the 15-year “tax credit compliance period,” the owner/manager must select low-income tenants who are eligible for the affordable units, which must be included in all LIHTC properties.

<sup>2</sup> 2003 Housing Credit Utilization. National Council of State Housing Agencies. [www.ncsha.org/uploads/ACF80ED.pdf](http://www.ncsha.org/uploads/ACF80ED.pdf). December 9, 2004.

<sup>3</sup> Low Income Housing Tax Credits can also be used to help finance transitional housing for homeless persons. However there are issues – such as project density and tenant/landlord laws – that make it difficult to use LIHTC to finance transitional housing. According to LIHTC regulations, LIHTC-financed transitional housing must: be targeted to homeless people; have a 24-month length of stay; provide a kitchen and bath in each living unit; and provide support services.

## Show Me the Money!

Under the LIHTC program, the federal government does not provide money directly to affordable housing developers. The only “real money” that ever changes hands in the LIHTC program is the money that investors pay to housing developers to buy the tax credits as described in Step Three above. The investors receive a reduction in their federal tax liability over a 10-year period in exchange for providing the equity (meaning the money) to finance the development of the housing. This reduction in federal tax liability is the incentive for investors to participate in the LIHTC program. It is also the reason why developers have no difficulty selling the tax credits they are awarded by the state.

Developers can never be completely certain ahead of time exactly how much money investors will pay to buy the tax credits. The amount can vary based on several factors including: (1) the “going rate” or market for tax credits that exists at the time the developer actually sells them to the investor; (2) the type of project proposed by the developer; and (3) other factors related to the project’s likelihood of success.

## Why Developers Love the LIHTC Program

The LIHTC program is very generous to developers. Depending on the amount of tax credits the state awards to a specific project, and how much money can be obtained from the sale of the tax credits, a developer may obtain up to 50 percent of the funding needed to finance an affordable housing project. These funds greatly reduce the need for developers to “put up” their own money to develop the housing.

The tax credits are valuable to developers for another reason. Once a state has awarded tax credits for a specific project, it is much easier for the developer to secure any remaining sources of funding needed to finance the project. Because

developers of affordable housing often “piece together” various forms of rental housing financing, the LIHTC program is often the “anchor” for the project’s overall financing strategy.

For all these reasons, the demand for tax credits among affordable housing developers is very high. Many states receive two to three times the number of requests for tax credits that can be awarded during a specific funding round.

Because the program involves a federal tax credit from the IRS, compliance with all the program’s requirements is essential. If there are problems during the 15-year compliance period, investors can lose their tax benefits, placing a substantial obligation on the developer/owner. Because of the potential tax consequences to investors, state agencies awarding tax credits require that housing developers meet certain organizational capacity and

### Eastside Lofts - A Mixed-Income LIHTC Property

**T**he Arc Arkansas ([www.arcark.org](http://www.arcark.org)) is a statewide membership organization providing supports, advocacy, education and leadership to people with developmental disabilities and their families. In 2001, The Arc Arkansas partnered with a local for-profit housing developer to purchase and renovate a former junior high school, transforming it into Eastside Lofts. Using over \$3.8 million in Low Income Housing Tax Credits, as well as other funding, the former classrooms were converted into 41 loft style apartments – 32 units for low-income households (three of these are for households with incomes below 30 percent of AMI) and 9 units with market-rate rents. The apartments were targeted to a mix of populations, including people with and without disabilities. All apartments are designed using Universal Design techniques – making every apartment accessible, livable, and visitable for any person regardless of their type of disability.

The Arc case managers provide support services to tenants and/or assist tenants with arranging for other community-based services. For more information, please contact Cynthia Stone at The Arc Arkansas at [cstone@arcark.org](mailto:cstone@arcark.org) or (501) 375-7770 or go to [www.arcark.org](http://www.arcark.org).

experience requirements to be eligible to receive LIHTC funds. To overcome these capacity issues, developers seeking tax credits for the first time (including non-profit organizations) often partner with others who have successfully developed/managed a LIHTC project.

## What Does LIHTC “Mixed-Income” Housing Mean?

One of the primary goals of the LIHTC program is to create “mixed-income” housing – meaning creating affordable housing units within market rate rental housing properties. To achieve this goal, a minimum number of affordable units are required in each LIHTC project. These affordable units are targeted to low-income households who are the primary beneficiaries of the program.

Under the LIHTC program, low-income households are defined as households with incomes at or below 50 percent or 60 percent of area median income. According to the LIHTC program guidelines, the minimum number of affordable units required in each LIHTC property is determined by the following federal formula:

- For a LIHTC project targeted to assist households at 50 percent of area median income and below, at least 20 percent of the units in the project must be affordable; **OR**
- For a LIHTC project targeted to households between 50 - 60 percent of area median income, at least 40 percent of the units in the project must be affordable.

In a mixed-income LIHTC project, once these minimum set-aside requirements are met, all of the other units can be rented at market rents.

## The 100 Percent Affordable Model

Under the LIHTC program, there is no requirement that projects be mixed income. In other words, the LIHTC program can be used to create projects that contain only affordable housing units and no market rate units. Non-profit housing developers frequently use the LIHTC program to develop projects that are 100 percent affordable to households within the income guidelines described above. Of course, in these types of projects, the non-profit developer must figure out how to obtain sufficient funding to make all of the units affordable.

## Affordable To Whom?

In its most basic form, the LIHTC program is not necessarily structured to create units that are affordable to extremely low-income households such as people with disabilities receiving SSI. Under the laws governing the program, the affordable units in LIHTC properties only need to be affordable for the program’s target population – meaning affordable to households at either 50 percent of median or at 60 percent of median.

People with disabilities receiving SSI on average nationally have incomes that are approximately 18 percent of median – well below the 50 percent/60 percent of area median income targeted by the LIHTC program. So does that mean that the affordable units in a LIHTC project will be affordable to people receiving SSI?

The answer to this question is complicated but the simple answer is no! Under the LIHTC program, the so-called “tax credit rents” for the affordable units are almost always too high to be affordable to households with extremely low incomes. Even if the LIHTC program is being used to develop housing for households at 40 percent of area median income, or even 30 percent of median income (as it is in a

few states), a rent subsidy is almost always needed to make the “tax credit rent” affordable to people with SSI level incomes of \$550-\$600 per month.<sup>4</sup>

## What Are Tax Credit Rents?

Thus, under the LIHTC program, the rents for the affordable units – often called “tax credit rents” – are calculated as follows:

- For the affordable units in LIHTC projects with at least 20 percent of the units targeted to households at 50 percent of area median income and below, the “tax credit rent” for the affordable units is set at 30 percent of 50 percent of area median income for that locality;
- OR
- For LIHTC projects with at least 40 percent of the units targeted to households at 60 percent of area median income and below, the “tax credit rent” for the low-income units is set at 30 percent of 60 percent of area median income for that locality.

Thus, the tax credit rent that the owner must agree to charge for the “affordable” units will depend on: (1) the income targeting of the **project** (i.e., households at 50 percent of area median vs. 60 percent, etc); and (2) the area median incomes in the project’s location. Unlike some HUD programs, the incomes of the tenants themselves are not a factor in calculating tax credit rents.

## Specific Examples

This concept of “affordability” in the LIHTC program is – in the abstract – one of the program’s most complex requirements. However, examples of hypothetical projects help to illustrate how the income targeting for the project and the area median income are used to calculate basic LIHTC affordable rents.

**Example 1:** A LIHTC property in Community A has 50 one-bedroom units. This property has 20 percent of the units (or 10 affordable units out of the 50 units in the property) targeted to households at 50 percent of area median income. The income of a one-person household at 50 percent of area median income in Community A is \$20,000 per year or \$1,666 per month. The “tax credit rent” for a one-bedroom affordable unit in this property in Community A would be 30 percent of 50 percent of area median income or \$500 per month ( $\$20,000 \div 12 \text{ months} \times 30 \text{ percent} = \$500$ ).

**Example 2:** A LIHTC property in Community B has 100 two-bedroom units. This property has 40 percent of the units (or 40 affordable units out of the 100 in the property) targeted to households at 60 percent of area median income. The income of a three-person household at 60 percent of area median income in Community B is \$30,000 per year or \$2,500 per month. The “tax credit rent” for a two-bedroom affordable unit in this property in Community B would be 30 percent of 60 percent of area median income or \$750 per month ( $\$30,000 \div 12 \text{ months} \times 30 \text{ percent} = \$750$ ).

**Example 3:** A LIHTC property in Community C has 40 one-bedroom units. This property has 20 percent of the units (or eight affordable units out of the 40 in the property) targeted to households at 50 percent of area median income. The income of a one-person household at 50 percent of area median income in Community C is \$15,000 per year or \$1,250 per month. The “tax credit rent” for a one-bedroom affordable unit in this property in Community C would be 30 percent of 50 percent of area median income or \$375 per month ( $\$15,000 \div 12 \text{ months} \times 30 \text{ percent} = \$375$ ).

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<sup>4</sup> For low-income households, *affordable* is defined as paying no more than 30 percent of income for housing costs. For people receiving SSI, *affordable* means rents between \$150 – \$200 monthly.

## Affordability and People with Disabilities

Virtually all people with disabilities receiving Supplemental Security Income (SSI) are theoretically eligible for the affordable housing units in LIHTC properties because they have incomes far below 50 percent or 60 percent of area median income. As regular readers of *Opening Doors* know, on average the national income of a person receiving SSI is equal to 18 percent of area median income.

The problem for many people with disabilities is that the tax credit rents for the affordable units in LIHTC properties are too *high*, as illustrated in the examples above. In certain localities with relatively low tax credit rents, if two people with disabilities are willing to share a unit, or if both members of a two-person household receive SSI, the tax credit rent may be affordable. But in many localities, the tax credit rent charged in a LIHTC property may be higher than a person's entire SSI monthly income.

## Why the LIHTC Program is Important

So why should the disability community care about this complicated program if it doesn't provide units that are affordable to people with disabilities receiving SSI?

There are at least three reasons:

1. The owners of LIHTC-financed properties are **required** to accept Section 8 vouchers.

**The LIHTC program is being used more and more to create permanent supportive housing for people with disabilities, including chronically homeless people with disabilities.**

2. States are increasingly using LIHTC in combination with an array of other affordable housing resources in order to achieve what is called "deeper income targeting" – which means they are trying to serve people with much lower incomes than 50 percent or 60 percent of area median income.
3. The LIHTC program is being used more and more to create permanent supportive housing for people with disabilities, including chronically homeless people with disabilities.

Before describing these positive aspects of the LIHTC program in more detail, it is helpful to understand the role of the states in administering the LIHTC program.

## Part Two – The LIHTC Program and the States

**E**ach state has a tax credit allocation agency responsible for administering the federal LIHTC program and awarding the tax credits to housing developers based on locally determined priorities. In most states, the state housing finance agency (HFA) is responsible for administering the federal LIHTC program. HFAs are state-chartered authorities established to help meet the affordable housing needs of their states. There is a state housing finance agency in each of the 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.

Although they vary from state to state in their relationship to state government, most HFAs are independent entities that operate under the direction of a Board of Directors appointed by the Governor. In a few states, the LIHTC program may be administered by the state Department of Housing and Community Development. To learn more about HFAs and state housing agencies, read issue 22 of *Opening Doors* available online at [www.tacinc.org](http://www.tacinc.org).

Each state receives an annual allocation of LIHTC based on a federally determined per capita amount (currently \$1.85 per capita). Thus, the amount of LIHTC available for new projects varies from state to state depending on population. Through some type of competitive process (usually a Request for Proposal), the state housing agency awards these tax credits to affordable housing projects proposed by developers. Most states have many more requests for tax credits than they have credits to award, so the program is very competitive.

## The LIHTC Qualified Allocation Plan (QAP)

The LIHTC program includes a requirement that states develop a strategic planning document – similar to the federally mandated Consolidated Plan – describing how the LIHTC program will be utilized to meet the housing needs and housing priorities of the state. This plan – known as the Qualified Allocation Plan (QAP) – must be submitted to the Department of Treasury/IRS each year in order for the state to receive its LIHTC allocation from the federal government. Because of the intense competition for tax credits in most states, developers pay very close attention to the housing priorities adopted in a state's QAP.

The QAP is prepared by the state each year through a process that includes a public hearing to solicit the public's comments on high priority housing needs and on the strategies proposed by the state to address these needs. The QAP must also provide information on the competitive process that the state will administer to award tax credits as well as any priorities for funding, set-asides, or threshold requirements adopted by the state. In some states, housing advocates for people with

## Massachusetts Qualified Allocation Plan

Recent Qualified Allocation Plans (QAP) for Massachusetts include threshold requirements that promote the development of new housing for people with extremely low incomes, including people with disabilities. The 2004 QAP developed by the Massachusetts Department of Housing and Community Development (DHCD) required that all LIHTC applications meet 11 threshold criteria, including a requirement that the project reserve 10 percent of the total number of units for households earning less than 30 percent of the area median income.

This Massachusetts QAP also included a preference for special needs housing, including housing for people with disabilities. Specifically, DHCD competitive process awarded six points to LIHTC projects that proposed to primarily serve individuals or households with special needs. This category included: the frail elderly to be served in assisted living projects; tenants with developmental disabilities; formerly homeless households making the transition to permanent housing; individuals with children; etc. However, the QAP clearly stated that the points were only available if the project design, amenity package, and services package were appropriate for the intended residents. For more information about the 2004 Massachusetts QAP go to [www.mass.gov/dhcd/components/housdev/TxCrProg.pdf](http://www.mass.gov/dhcd/components/housdev/TxCrProg.pdf).

disabilities have used the development of the QAP to create preferences or set-asides that benefit people with disabilities.<sup>5</sup>

## QAP Preferences, Set-Asides, and Threshold Requirements

Within general guidelines promulgated by the federal government, states are allowed to set specific allocation criteria for awarding tax credits. Federal law requires that the QAP give priority to projects that serve the lowest-income households and remain affordable for the longest period of time. As mentioned above, at least 10 percent of a state's annual LIHTC allocation must be reserved for non-profit organizations. These requirements can help

<sup>5</sup> Guggenheim, Joseph. *Tax Credits for Low Income Housing. Opportunities for Developers, Non-Profits, Agencies and Communities Under Permanent Tax Act Provisions.* 10<sup>th</sup> Edition. Page 69.

the disability community to argue that the state's QAP must include a high priority and feasible strategies for the use of LIHTC funding to create housing that will be affordable to people with disabilities with the lowest incomes.

As part of the QAP, states can establish selection criteria that target specific groups – such as people with disabilities, people who are homeless, elderly people, etc. – or specific localities, such as rural areas. According to the HUD 2001 study *Analysis of State Qualified Allocation Plans for the Low-Income Housing Tax Credit Program*, almost all the QAPs reviewed (51 total) included some type of incentive to create housing for people with special needs.

In general, these incentives were of three types: preferences; set-asides; and threshold requirements.

- **Preferences** are used when scoring applications. Under a preference system, LIHTC project applications that propose to meet the state's established preferences (e.g., housing for people with disabilities, housing for elders, special needs housing, etc.) are awarded extra points.
- **Set-asides** operate a little differently than preferences. Under set-aside policies, a portion of LIHTC funds are actually reserved each year for certain types of projects. Some states have created set-aside policies to encourage the development of permanent supportive housing or other permanent housing for people with disabilities.
- **Threshold requirements** are another policy approach used to facilitate the

development of certain types of LIHTC projects. Threshold requirements establish specific standards that are applicable to all developers applying for LIHTC funds. In states that use threshold requirements, an application would have to meet these minimum standards in order to be deemed “eligible” to receive an award of LIHTC. For example, some states – such as Massachusetts (see the box on [page 9](#)) – have established threshold standards that require all developers applying for LIHTC to agree to target 10 percent of the LIHTC units funded for households with incomes at or below 30 percent of the area median income. Those LIHTC project applications that do not meet this requirement are considered not to have “met threshold” and are, therefore, ineligible to compete for funds.

## Which Approach Works Best?

Some states use only preferences to allocate LIHTC funds. Some use only set-asides or threshold requirements. Some use a combination of these incentives while other states use none at all. Since they establish requirements for certain types of housing, set-asides and threshold requirements are more active policy directives than preferences, which merely encourage but do not mandate certain types of housing. However, all three are useful approaches used by some states to encourage the development of LIHTC-financed housing for groups with high priority housing needs as defined by the state.

## Part Three – Making the Low Income Housing Tax Credit Program Work for Extremely Low-Income People with Disabilities

There are several approaches and strategies that the disability community can recommend to state officials to ensure that extremely low-income people with disabilities benefit from affordable housing activities financed through LIHTC program. Some of the most successful strategies are discussed below.

### Linking Tax Credit Properties With Rent Subsidies

As it is currently structured, the LIHTC program only helps pay for the one-time cost of developing the housing (e.g., the cost of acquisition/rehabilitation or new construction of housing). With the exception of certain very innovative projects, LIHTC does not pay for the ongoing cost of operating the housing (e.g., insurance, maintenance/repairs, reserves, property management costs, utilities, etc.).<sup>6</sup> In order to make LIHTC affordable housing truly affordable to people with disabilities, an ongoing rent subsidy or operating subsidy is needed to cover the affordability gap between 30 percent of SSI income and the tax credit rent. Two federal rent subsidy programs – the Section 8 Housing Choice Voucher program and HUD McKinney/Vento Homeless Assistance Shelter Plus Care program – can be linked with the LIHTC program using the approaches described below.

### Linking LIHTC Properties and Section 8 Vouchers

HUD's Section 8 Housing Choice Voucher program is the longest and most successful federal rent subsidy program. More than 2 million Section 8 vouchers are now administered at the local level by Public Housing Agencies (PHAs), including more than 60,000 vouchers that are set aside exclusively for people with disabilities. For more information on the Section 8 program and these set-asides, read issues 17 and 25 of *Opening Doors* available online at [www.tacinc.org](http://www.tacinc.org).

The Section 8 program is designed to take advantage of rental housing in the private market. The fact that landlords are generally not required to accept prospective tenants who have vouchers makes it very difficult to use a voucher in many locations. Even after searching for housing for 60-120 days, people issued vouchers – including people with disabilities – frequently cannot find a landlord willing to accept payments under the voucher program.

Housing advocates for people with disabilities are often surprised to learn that under federal rules, owners of LIHTC properties are **required** to accept Section 8 vouchers. In practical terms, this requirement means that an owner of a LIHTC property may not reject a household seeking a LIHTC unit **solely** because the household will use a Section 8 voucher to help pay their rent. People with disabilities can use this rule to gain access to high quality LIHTC-financed rental housing – including newly constructed accessible units.

This requirement to accept households with vouchers is not absolute, however. The owner is not required to accept a

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<sup>6</sup> A few non-profit developers have used LIHTC financing to create reserve funds that can cover the cost of subsidizing the rents for the lowest-income households.

**The Section 8 project-based program is an excellent resource to combine with the LIHTC program to ensure the affordability of the tax credit units for people with the lowest incomes.**

household with a Section 8 voucher if the household fails to meet the owner's screening criteria (credit history, criminal background, previous landlord references, etc.) used for all prospective tenants. For example, if the owner screens out all prospective tenants with criminal histories, a household with a voucher could be denied a LIHTC unit if a member of the family has a criminal history. However, owners should not be permitted to use income screening criteria for voucher holders (some have tried), since the rent will be subsidized through the Section 8 voucher program.

Housing advocates agree that there has not been enough education, policy development and enforcement regarding this LIHTC/Section 8 requirement. Disability advocates are particularly concerned that there is no systematic strategy in most states to link people with mobility/sensory impairments who have Section 8 vouchers to vacant accessible units in LIHTC properties.

State policies that could be adopted to effectively link Section 8 voucher holders with LIHTC units include the following:

- During the initial occupancy period, states could require LIHTC owners to provide written notice to PHAs in the project's jurisdiction at least 60 days prior to taking applications. PHAs could then be required to provide this information to people with vouchers looking for housing. The initial occupancy period is important because it is the only time when all of the affordable units in the property – including all those with accessible features – are available for occupancy;
- On an continuous basis, states could require LIHTC owners to list all vacant affordable units with PHAs in the jurisdiction; and

- States could create and fund a web-based Housing Registry that would list all vacant affordable and accessible units in LIHTC properties.

It is important to point out that Section 8 rents can be a complicated issue in LIHTC projects. For example, the tax credit rent for an affordable LIHTC unit may be higher than the Section 8 rent permitted by the Public Housing Agency (PHA). However, the PHA should be able to grant an exception rent for a person with a disability as a reasonable accommodation under Section 504 policies, which apply to the PHA's Section 8 program. If the tax credit rent is above the exception amount that can be approved by the PHA (which could happen in a very high-cost housing market area) the PHA can request HUD's approval of the exception rent.

## **Combining LIHTC Financing with Section 8 Project-Based Assistance**

While tenant-based rental assistance is the most common and well-known type of Section 8 assistance, new Section 8 rules now allow a PHA to commit a portion of its Section 8 voucher funding to project-based assistance. Under the project-based assistance program, the Section 8 voucher is actually committed or "tied" to one or more units in a specific building for a specific period of time. The project-based subsidy helps create new affordable housing units in a community because it provides the guarantee of a rental subsidy. Because LIHTC properties always involve new construction or rehabilitation, policies linking Section 8 project-based vouchers directly to LIHTC properties can also help provide high quality housing to Section 8 program participants.

Through the Section 8 project-based assistance option, a PHA can now designate up to 20 percent of its Section 8 funding to be used in specific rental properties. Both new as well as existing rental projects are eligible to receive project-based rental assistance. The project-based assistance program encourages mixed-income housing<sup>7</sup> and permits PHAs to commit the Section 8 voucher to the property for up to 10 years (subject to annual appropriations). These policies make the Section 8 project-based program an excellent resource to combine with the LIHTC program to ensure the affordability of the tax credit units for people with the lowest incomes.

State housing agencies that administer both the LIHTC program as well as the Section 8 program are in an ideal position to create system level linkages between the LIHTC program and the Section 8 project-based program. For example, a state HFA preparing its QAP could propose that its new tax credit financed barrier-free and accessible housing units be targeted for the Section 8 project-based voucher program administered by the state PHA.

The Section 8 project-based program can also be combined with the LIHTC program to create permanent supportive housing. A few states, including the State of Connecticut, are actively pursuing this strategy to help end chronic homelessness by creating partnerships between the HFA administering the LIHTC program and PHAs willing to commit project-based vouchers for permanent supportive housing. LIHTC-financed permanent supportive housing projects frequently need additional capital resources such as those discussed at the end of this article.

## Linking LIHTC with HUD's Shelter Plus Care Program

HUD's McKinney/Vento Homeless Assistance Shelter Plus Care program is a permanent supportive housing program that provides rental assistance to homeless people with disabilities. It is one of several HUD programs authorized by Congress through the McKinney/Vento Homeless Assistance Act. The Shelter Plus Care program has four separate components, including a project-based component that works much like the Section 8 project-based program described above.

Under Shelter Plus Care project-based assistance, rent subsidies can be "tied" or committed to supportive housing projects for a period of either 5 or 10 years. Congress has consistently provided renewal funding for Shelter Plus Care rent subsidies that expire after the initial 5-10 year contract period, a program feature that helps link Shelter Plus Care projects to LIHTC financed supportive housing strategies. [NOTE: For more complete information on how the Shelter Plus Care program can be used to expand permanent supportive housing for homeless persons with disabilities, read issue 13 of *Opening Doors* available online at [www.tacinc.org](http://www.tacinc.org).]

New Shelter Plus Care subsidies for LIHTC-financed properties are obtained through HUD's annual Continuum of Care competition. There are over 400 local Continuum of Care groups that have been formed to coordinate the delivery of homeless assistance programs including McKinney/Vento Homeless Assistance resources provided by HUD. More information on local Continuums of Care and HUD's McKinney/Vento Homeless Assistance programs can also be found at [www.tacinc.org](http://www.tacinc.org).

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<sup>7</sup> No more than 25 percent of the units in a building may receive project-based vouchers although elderly housing and housing for persons with disabilities are exempt from this requirement.

Since 1999, HUD has provided permanent housing “bonus” funding to local Continuums of Care that rank a new permanent supportive housing project, such as a Shelter Plus Care project-based application, as their #1 priority for funding. HUD’s Super Notice of Funding Availability (Super NOFA) published each spring provides localities with the opportunity to apply for new Shelter Plus Care subsidies that could be linked with LIHTC-financed properties. In some states, LIHTC have been linked with Shelter Plus Care project-based subsidies during the actual development of the project. However, these subsidies can also be used to provide permanent supportive housing opportunities in existing LIHTC projects through set-asides of affordable units in mixed-income developments.

## Linkages to Other Federal Housing Resources

In most states, it is impossible to develop new affordable rental housing using only LIHTC. Although tax credits typically generate 40 percent or more of the cost of development,<sup>8</sup> in almost every instance, additional capital financing is needed in order to make the project financially viable. Some 100 percent affordable LIHTC properties may have five or more separate sources of financing.

A few states have utilized state housing trust funds and tax exempt bond financing in combination with LIHTC. Most states combine the federal HOME program administered by states and localities to help fill the financing gaps in LIHTC projects. State policies linking federal LIHTC funding with state HOME funding and a rent subsidy can help develop new rental housing opportunities affordable for people with disabilities. This coordination could begin when the state prepares its QAP and Consolidated Plan for approval by the

federal government. While all of this bureaucracy can sound overwhelming, it is through these planning processes, as well as other sustained advocacy efforts, that LIHTC policy-related changes actually occur. For more information about the HOME program, as well as the Consolidated Plan, read issues 8 and 16 of *Opening Doors* available online at [www.tacinc.org](http://www.tacinc.org).

## Conclusion

It is clear that the LIHTC program is a critical resource to create affordable rental housing. With the appropriate policies and strategies in place, the LIHTC program can create hundreds of new affordable rental units for people with disabilities with SSI level incomes. These policies are never created overnight, however. Experience shows that it takes a sustained advocacy effort by the disability community to positively affect LIHTC policies at the state government level.

Disability advocates are often at a disadvantage in LIHTC discussions because they lacked information on how the program works and how it can benefit people with disabilities. This issue of *Opening Doors* has helped close that information gap, and is intended to promote new advocacy efforts by the disability community.

Key strategies that could be the focus of discussions between disability advocates and state LIHTC officials include the following:

- Work with your state’s HFA or tax credit administering agency to create an accessible list of all LIHTC properties. Ensure that this list is distributed to: (1) all PHAs in your state that administer a Section 8 program; (2) Independent Living Centers that assist people with disabilities to locate accessible housing; and (3) other agencies that assist people with disabilities to obtain affordable

<sup>8</sup> *Low Income Housing Tax Credit (LIHTC). 2004 Advocates’ Guide To Housing and Community Development Policy.* National Low Income Housing Coalition. [www.nlihc.org/advocates/lihtc.htm](http://www.nlihc.org/advocates/lihtc.htm). December 13, 2004.

housing. At the local level, facilitate communication between LIHTC owners, the PHAs, and disability housing advocates so that vacancies in affordable units can be accessed by people with disabilities who have

vouchers. To be most useful, the list of LIHTC properties should be updated at least annually.

- Meet with staff from your state tax credit agency to advocate for preferences, set-asides, or threshold

## HUD LOW INCOME HOUSING TAX CREDIT PROPERTY DATABASE

**H**UD has created a Low Income Housing Tax Credit (LIHTC) property database that holds information on nearly 22,000 projects containing more than 1.14 million rental housing units. The database includes properties developed between 1987-2002 and does not include more recent properties developed in 2003 and 2004.

The database allows the user to extract information on projects such as the address, number of total units, number of low-income affordable units and bedroom distribution. Additionally, the database can be sorted by various fields, including the year the project was "placed in service" (meaning the year the project was first available for occupancy by tenants), whether the project was new construction or rehabilitation, sources of project financing, etc.

To use the database, go to <http://lihtc.huduser.org>.

- **Step 1:** Begin at the upper left box labeled **Select the variables you want to extract from the database**.
- **Step 2:** Under **Project Identification**, un-check the box for **HUD ID Number**. Check the box for **Project Name and Address** and **Project Contact Information**.
- **Step 3:** Scroll down to **Project Characteristics** and check the box for **Total Units**, **Low-Income Units** and **Unit Bedroom Distribution**. Leave the rest of the boxes un-checked.
- **Step 4:** The lower left box is labeled **Select a Single State or Multiple States**. This section allows the

search to be refined by a single state or multiple states. In order to select multiple states, make the first selection and then hold down the control button and click the additional selections. Once you select a state or states, the screen on the right side will allow you to refine your search.

- **Step 5:** If you click on a single state, you will be able to refine your search by city or county. To make multiple selections for city or county, use the control button.
- **Step 6:** The database will default to "No restrictions" for the fields, **Placed-in Service Years**, **Credit Allocation Years**, **Credit Type**, **QCT/DDA Increase in Basis**, **Sponsorship**, **Construction Type**, **FmHA/RHS Section 515 Loan and Tax-exempt Bond Financing**. TAC recommends keeping "No restrictions" checked in order to extract the most information.
- **Step 7:** The results will provide the project name, address and bedroom distribution as well as the contact company's name, address and phone number. Advocates may call the contact company to find out further information on the project.

*Please note that the database does not provide information on actual vacant units that are available for rent. In order to determine whether there is an affordable housing unit available for rent in one of the properties listed, or to find out how to make an application, advocates must call the project's property management office directly.*

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requirements within the state's LIHTC QAP. Advocate that these approaches should be used to create permanent supportive housing and/or affordable housing for people with disabilities with SSI level incomes. Assist the state to replicate system-level linkages that facilitate the coordination of housing resources, such as LIHTC, with rent/operating subsidies such as Section 8 or Shelter Plus Care project-based assistance through a structured Request for Proposal process. Several state housing agencies, including the Connecticut Housing Finance Agency (CHFA) have successfully implemented

structured RFP's for LIHTC financing linked with rental subsidies for people with disabilities.

- Encourage the state LIHTC agency to implement a training program for LIHTC owners on their responsibilities regarding the acceptance of Section 8 vouchers. Strong anecdotal evidence suggests that some states do not adequately inform or monitor owners regarding Section 8 voucher issues. If the state also administers a Section 8 program, insist that policies be implemented to facilitate access to LIHTC units by people with disabilities using vouchers.

## Opening Doors

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