



Kirwan Institute  
Many Differences **One** Destiny



## **Implementing the Fair Housing and Equity Assessment: Advancing Opportunity Through the Low-Income Housing Tax Credit**

The Fair Housing Equity Assessment (FHEA) represents a new opportunity for regional and local agencies to be more strategic with their resources to advance goals of investing in high-poverty communities while ensuring that more low-income people and families have expanded mobility to neighborhoods of high opportunity. Achieving these goals at a regional scale will take strategic investment to leverage all resources available for the task.

Critical to achieving regional housing choice and affordability is the Low-Income Housing Tax Credit (LIHTC) program. These tax credits are a vital source of finance for the construction and preservation of affordable housing. The program has financed 90 percent of all affordable housing created across the country, with more than 2.4 million units constructed, since its inception in 1986. Housing constructed using LIHTC resources often have more flexibility in usage compared with those built using other financial sources for affordable housing, making LIHTC an even more valuable instrument to expand housing choice for low-income families in quality school districts, transit-rich neighborhoods, and gentrifying communities. Properties funded by the LIHTC complement other rental assistance programs like the Housing Choice Voucher (HCV) program, as the LIHTC program focuses on expanding the supply of affordable housing in areas of opportunity, where it is more difficult or not possible for vouchers to be used.<sup>1</sup>

In this brief, we address how the LIHTC program can be a useful tool to implement regional goals to expand affordable housing options in areas of high opportunity, preserve affordable housing in gentrifying neighborhoods, and build quality affordable housing as part of a revitalization strategy in disinvested neighborhoods of concentrated poverty.

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

The LIHTC program was introduced through tax reform legislation in 1986 as a way to stimulate private production of affordable rental housing. Unlike other subsidized housing programs administered through the U.S. Department of Housing and Urban Development (HUD), the LIHTC program is administered by the Internal Revenue Service (IRS) and the U.S. Department of the Treasury because it is a tax credit that is allocated to developers through state tax-credit allocation agencies. Each state receives its share of tax credits through a per capita formula, with a minimum threshold of \$2,525,000.<sup>2</sup> To receive LIHTC funds, developers apply to their state for credits, and then use the credits to help obtain property for the construction or

rehabilitation of affordable homes. To qualify as a LIHTC property, either 20 percent of the building units must be rent restricted and occupied by people with incomes lower than 50 percent of the area median **or** 40 percent of the units must be restricted to households earning below 60 percent of the area median income.<sup>3</sup>

The tax credits are allocated by state housing finance agencies to properties that meet local housing needs and goals, so the use and placement of LIHTC credits varies from state to state. Sometimes state tax-credit allocating agencies will sub-allocate the credits to local agencies for them to manage distribution; this typically occurs in large cities such as New York or Chicago that have a diverse set of needs and complicated affordable housing infrastructure issues. However, each allocating agency must ensure that LIHTC and other subsidized property placements contribute to an overall plan. The plan for the distribution of these properties is the Qualified Action Plan (QAP). This QAP must be submitted to HUD for review and approval every year.<sup>4</sup> Through the QAP, HUD still maintains some oversight over LIHTC distribution despite the fact that the credits are administered through the IRS.

### ***Qualified Action Plans***

QAPs are complex policy documents that articulate the goals, objectives, and criteria that measure how Low-Income Housing Tax Credits will be awarded. They vary widely by state. Typically, QAPs involve five different types of tools to help ensure that the projects selected for tax credit allocations are aligned with the overall goals and objectives of the state or region: point-based scoring criteria, minimum thresholds, set-asides, basis boosts, and policy statements. We explore examples of how these tools are used to incentivize the use of LIHTC to achieve policy goals later in the brief.

<b>QAP Incentive Tool</b>	<b>What is it?</b>
Point-based scoring criteria	Points are awarded to projects that meet certain goals or priorities; projects are then ranked to determine which developments have the highest qualifications.
Minimum thresholds	Minimum standards must be met in order for developments to be eligible for tax credits.
Set-asides	A designated proportion of the allocation pool is dedicated to specific types of projects or geographies.
Basis boosts	A provision of the LIHTC allows a greater percentage of project costs to be covered by the tax credit, thus reducing overall costs to the developer. <sup>a</sup>
Policy statements	Broad statements are intended to guide the allocation of tax credits.

<sup>a</sup> For more information on basis boosts, see HUD’s website: [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning/affordablehousing/training/web/lihtc/calculating/qualifiedbasis](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/affordablehousing/training/web/lihtc/calculating/qualifiedbasis).

Policy goals in QAPs usually center on three questions:

1. Where should affordable housing be located?
2. What types of homes should be constructed?
3. What types of tenants should be prioritized?

Many states and regions use QAP allocation location criteria to help expand the supply of affordable housing in suburbs with high-quality schools or near job centers, to spur community revitalization in disinvested communities, or to stem displacement in gentrifying neighborhoods. All three of these goals will have varying regional significance and will require a different set of incentives and criteria.

While the policy goals of expanded mobility in areas of opportunity, preservation of units in gentrifying neighborhoods, and reinvestment in neighborhoods of concentrated poverty are an important focus, the types of apartments built are also important. In many regions, LIHTC use has begun to move to more affluent suburbs; however, these developments mostly contain single-occupant units for senior citizens. Units with two or more bedrooms for families with children are often located in low-opportunity neighborhoods. These types of LIHTC policies often have disproportionate adverse effects on communities of color, which are often younger people and families with children.

Because the criteria for tax credit allocation can be so flexible, it serves a critical role in advancing regional equity in different neighborhood contexts. The FHEA establishes a regional prioritization framework for advancing opportunity and reducing segregation. The QAP, in turn, should support the regional goals established in the FHEA. In the next section, we identify ways in which the LIHTC allocation process should align with the FHEA to ensure the efficacy of this critical implementation tool.

### ***Leveraging the Low-Income Housing Tax Credit to Achieve Regional Equity Goals***

The three phases of the FHEA—data, deliberation, and decision making—are designed to provide regional consortia with the essential steps necessary to undertake a collaborative approach. By collaborating, communities can identify systematic barriers to equity and plan for equitable community development.

- Phase 1. Through the data analysis, regional stakeholders can develop a mutual understanding of access to opportunity, and use this understanding as a framework to measure progress on future investments.
- Phase 2. In the deliberation of these findings, these partners will have the opportunity to reflect on the causes of persistent disparities in access to opportunity among a diverse set of partners.
- Phase 3. These conversations will bring about creative solutions that recognize the interdependent nature of regional investments and plans will emerge to inform regional plans and policies. The result will be a decision-making process that advances opportunity for all.

The following section provides guidance to help regional planners and consortia understand how to leverage the LIHTC to implement regional mobility, preservation, and reinvestment goals.

*Map the location of LIHTC developments relative to areas of segregation, racially and ethnically concentrated poverty, and various dimensions of access to opportunity.*

Historically, both subsidized and unsubsidized rental housing is more commonly found in lower-income neighborhoods. The concentration of rental housing in low income communities reflects the fact that lower-income households are more likely to rely on rental housing because the cost of homeownership is out of reach and zoning regulations and high land costs have limited the supply of rental housing in higher-income neighborhoods. However, recent additions to the multifamily rental housing inventory show that rental housing is becoming more evenly distributed across regions.<sup>5</sup> More importantly, as rental housing demand grows across all demographics and in all metro areas, preserving existing affordable rental housing and creating new rental opportunities in high-opportunity areas become increasingly more important for policymakers to consider as they develop regional housing plans.

Among the tools LIHTC allocating agencies can use to encourage development in certain locations is the basis boost. The basis boost allows a greater percentage of project costs to be covered by the tax credit. Federal statute allows allocating agencies to use the basis boost to support development in “qualified census tracts (QCTs).”<sup>b</sup> This can have the impact of siting properties in lower-income communities because QCTs are very low income by definition. However, agencies also have the authority to award the basis boost to properties in Difficult Development Areas (DDA). DDAs are areas designated by the Secretary of HUD that have high construction, land, and utility costs relative to the area median income. In addition, the Housing and Economic Recovery Act of 2008 (HERA) provided discretion to allocating agencies to designate additional communities where properties are eligible for the basis boost. In some states, agencies are using this authority to award the boost to properties located in areas of opportunity.<sup>c</sup> Further, federal statute requires that tax credits allocated to high-poverty areas should be preceded by a “concerted community revitalization plan” to ensure that they are not contributing to the further concentration of poverty.<sup>d</sup>

---

<sup>b</sup> Qualified census tracts are those that have a majority of residents living at or below 60 percent of the area median income or those that have a poverty rate of at least 25 percent.

<sup>c</sup> For example, the 2014 QAP in Pennsylvania allows properties with general occupancy units in “areas of opportunity”, as defined by the Agency or are sited in order to affirmatively further fair housing or in areas that have not received representative resources in the past as eligible for the basis boost.

<sup>d</sup> Because there lacked sufficient data about the siting of LIHTC and tenant demographics of LIHTC properties, in 2009 Congress mandated that state housing agencies provide tenant data to HUD. Preliminary analysis of this data shows that 43 percent of LIHTC residents had incomes at or below 30 percent of area median income and that nearly 70 percent of these residents received additional forms of rental assistance. This information is a starting point for analyses to begin to understand how LIHTC siting may be used to create more affordable rental housing in areas of opportunity

The HUD data on segregation and areas of racially or ethnically concentrated poverty provides a starting point for analyses; use this data to begin to understand how LIHTC siting may be reinforcing trends of inequity.

Many LIHTC properties are also located in newly gentrifying areas, where newer, more affluent residents are moving in. There are several ways to measure gentrification and risk for residential displacement. In brief, a few key indicators for displacement potential of lower-income residents include lowering vacancy rates, increasing property values, a high proportion of low-income renters paying more than 30 percent of their income on housing costs, and increasing rents. In these neighborhoods, it is important to look not just at the location of LIHTC properties, but how soon their affordability will expire.<sup>e</sup>

In areas proximate to transit, the displacement of low-income residents can undermine support for transit service and negatively impact the economic development potential of the community. Preserving and improving existing affordable housing proximate to transit is significantly more cost-effective than building new affordable housing. Ensuring a sufficient supply of affordable housing near transit is important for a number of reasons. A diverse base of riders is necessary to maintain demand for transit service. Displacing transit dependent low-income seniors or disabled individuals to less convenient locations can increase the cost of providing transit services.

Identifying the location of LIHTC properties in relation to other aspects of opportunity can also provide insight into whether LIHTC distribution is increasing or inhibiting opportunity access in the region.<sup>f</sup> If there is little access for low-income people and people of color in areas with high educational, economic, or transit opportunity, this may indicate a need to focus on developing incentives that will allow more affordable housing projects to be built in these places. In this analysis, it is also important to understand the underlying political and economic context for why there may be fewer LIHTC properties located there. Are these areas in jurisdictions or neighborhoods with a history of “NIMBYism” (not-in-my-backyard opposition) or strong local control over development? Do they lack areas zoned for multi-family development? Do they have very high land costs? If there are any LIHTC properties there, do they serve families with children? Use these questions as a starting point to uncover any barriers that exist to expanding affordability there.

---

<sup>e</sup> Data on LIHTC properties can be acquired from HUD’s “Picture of Subsidized Housing Database,” available at <http://www.huduser.org/portal/datasets/assthsg.html>. For more detailed information on expiration of credits and affordability, contact your local housing finance agency. Some local data intermediaries may also have this information.

<sup>f</sup> HUD provides baseline data to help Sustainable Communities Regional Planning grantees get started on their data analysis for the FHEA. The data provided include indices of Racially/Ethnically Concentrated Areas of Poverty (RCAPs/ECAPs), segregation, neighborhood school proficiency, labor market engagement, job accessibility, health hazards exposure, and transit access. The HUD-provided data also include a method for identifying the level of access or exposure to the various dimensions of opportunity for different demographic groups.

***Consult with local affordable housing developers and local jurisdictions to understand barriers to building LIHTC developments.***

Developers, as end users of the LIHTC, are often very active in the development of QAPs, commenting frequently on ways to refine criteria to meet market realities. Because of their role as a key stakeholder in the program, they are an important resource to not only understand how criteria might be shaped to better achieve regional equity goals but also to be a potentially necessary ally to successfully make changes to the QAP. In addition to working with developers, survey local jurisdictions and explore previous assessments on land use barriers to constructing affordable housing. It may be helpful to convene a roundtable or working group with developers and local jurisdictions (especially high-opportunity jurisdictions with little subsidized housing) to understand how to better shape criteria for developments in these places.

***Invite your state housing finance agency to discussions about regional equity goals.***

The QAP is a yearly process that is meant to evolve over time to help achieve local affordable housing and community development goals. By including your state housing finance agencies in conversations about regional equity and fair housing goals, your consortium can help to shape future LIHTC allocation criteria to ensure that these developments will be an instrumental tool in implementation. Educate housing finance agency staff about the regional fair housing and equity assessment process, presenting the findings of the data on segregation, concentrated poverty, and access to opportunity. Ask them to educate consortium members and equity advocates about the QAP process and the state's current policies and priorities relative to LIHTC allocations. Engage in discussions about how current QAP goals and criteria match with the current landscape of how LIHTC developments are sited—include affordable housing developers in these discussions as well. These conversations may help to uncover new ways of ensuring that QAP goals and incentives are meeting state and regional goals.

***Transit and affordable housing stakeholders should collaborate to prevent the displacement of low-income residents from communities receiving transit investments.***

Transit implementers and planners should make sure affordable housing stakeholders understand the location of future transit investments early on in the process so that the full impact on affordable housing can be assessed. Together, housing and transit agencies should include an explicit preference for preserving and improving affordable housing in their station area planning process, and should make sure that the planning process includes representatives from the local community. Transit agencies should also incorporate into their funding evaluation criteria whether local communities have put in place strategies to preserve affordable housing where transit investments are being proposed.

***Work with your housing finance agencies to incorporate QAP policies that promote equity through mobility and investment in high-poverty communities.***

After a review of the location of LIHTC properties relative to various aspects of opportunity, work with local jurisdictions, equity advocates, and developers in your consortium to develop a set of LIHTC criteria that will help you achieve your regional equity goals identified in the FHEA.

Below are some examples of policies that can be employed in the LIHTC program to achieve regional goals centered on expanding mobility options, reinvesting in high poverty communities, and preserving affordability in gentrifying communities. The specific combination of incentives and policies that will work for your region will be based on local market and policy contexts. This is why it is important to have the housing finance agency staff, affordable housing developers, jurisdictions, and equity advocates at the table early on in the process to work through these details.

- Policies and criteria that promote mobility to high-opportunity locations:
  - Eliminate provisions that require or give preference to projects approved directly by elected officials. These provisions can prevent LIHTC projects from being built in high-opportunity areas that face NIMBY opposition.
  - Award extra points for projects that are built in areas of high educational, economic or transit opportunity—especially if they meet all three of these thresholds. Work with equity advocates to develop a definition of opportunity that makes sense and will help achieve regional goals.
  - Assign a certain target or set aside for the number of LIHTC projects that are allocated to high-opportunity communities. This approach has been taken in Massachusetts and Pennsylvania.<sup>6</sup>
  - In many states and regions, high-opportunity areas often are located in higher-cost neighborhoods and jurisdictions. In these places, use a basis boost to ensure that higher development costs don't deter LIHTC developments in these areas.
  - Create standards that prioritize the building of sites for families with children in high-opportunity areas.
  
- Policies and criteria that promote preservation of affordability in gentrifying and opportunity neighborhoods:
  - Most states already include some criteria to incentivize preservation in their tax-credit allocations—while preservation is a worthwhile goal, in many places, preservation without a focus on specific geographies where it is most needed crowd out broader aspirations of expanding access to opportunity. Refine the incentives for preservation to include a focus on preservation of properties in neighborhoods that are either gentrifying or near crucial amenities, such as transit, quality schools, or job centers.
  - Expand the incentives for preservation by providing a 30 percent basis boost for preservation properties, as Indiana, Michigan, Missouri, and Oregon have done,<sup>7</sup> or to increase the amount of tax credits set aside for preservation properties, especially in gentrifying neighborhoods or areas of high opportunity.

- For more information on preservation incentives by state, refer to the “2011 State by State Summary: Affordable Housing Preservation Incentives” by the National Housing Trust.<sup>8</sup>
- One way to achieve preservation of neighborhood affordability is to expand the duration of affordability beyond the 15-year minimum for LIHTC projects. Award extra points or establish threshold requirements to ensure projects in these neighborhoods provide for affordability for at least 30 years or more. The National Community Land Trust Network and the University of New Orleans have compiled a list of states’ QAPs that have used different types of incentives to extend affordability of LIHTC developments for more information on how to achieve this goal.<sup>9</sup>
- Policies and criteria that promote reinvestment in neighborhoods with high poverty:
  - Work with housing finance agencies to ensure that tax credits allocated in qualified census tracts are in places with concerted neighborhood revitalization plan.
  - Include local jurisdictions and equity advocates in conversations about the definition of a concerted neighborhood revitalization plan. These types of definitions could include provisions for places that are already targeted for federal, state, or local investment; are part of a mixed-income housing strategy; or includes significant community amenities, such as parks or a community center.<sup>10</sup>
  - Ensure that definitions around concerted community revitalization plans prioritize significant community engagement and community endorsement of the plan. Equity advocates will be essential in crafting these provisions.

---

<sup>1</sup> Jill Khadduri, *Creating Balance in the Location of LIHTC Developments: The Role of the Qualified Allocation Plan*

<sup>2</sup> “2013 Federal Tax Credit Information by State,” Novogradac Affordable Housing Resource Center, accessed November 14, 2013, [http://www.novoco.com/low\\_income\\_housing/lihtc/federal\\_lihtc.php](http://www.novoco.com/low_income_housing/lihtc/federal_lihtc.php).

<sup>3</sup> K.M. Horn, *The Low Income Housing Tax Credit and Racial Segregation*. (New York: NYU Wagner Graduate School, 2011).

<sup>4</sup> Myron Orfield. “Racial integration and Community Revitalization: Applying the Fair Housing Act to the Low Income Tax Credit.” *Vanderbilt Law Review* 58, no. 6 (November 2005), 1747-1804.

<sup>5</sup> *America’s Rental Housing Market: Evolving Markets and Needs*. Joint Center for Housing Studies of Harvard University, December 2013.

<sup>6</sup> Ibid.

<sup>7</sup> “State and Local Preservation Resources,” National Housing Trust, accessed November 14, 2013, [http://www.nhtinc.org/state\\_and\\_local\\_preservation\\_resources.php](http://www.nhtinc.org/state_and_local_preservation_resources.php).

<sup>8</sup> “2011 State by State Summary: Affordable Housing Preservation Incentives,” National Housing Trust, published March 2011, accessed November 14, 2013, [http://www.nhtinc.org/downloads/state\\_preservation\\_scan\\_summary\\_table\\_march\\_2011.pdf](http://www.nhtinc.org/downloads/state_preservation_scan_summary_table_march_2011.pdf)

<sup>9</sup> Marla Nelson and Elizabeth Sorce, *Supporting Permanently Affordable Housing in the Low Income Housing Tax Credit Program: An Analysis of State Qualified Allocation Plans* (National Community Land Trust Network and the University of New Orleans, 2013).

<sup>10</sup> Khadduri, *Creating Balance in the Location of LIHTC Developments*.