

TAX CREDIT HOUSING MANAGEMENT

A Legal Compliance
Guide for the Low-Income
Housing Tax Credit
Community

JANUARY 2025

insider

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Use FAQ to Introduce Prospective Residents to LIHTC Program Housing

Clear up confusion between tax credit housing and other federal programs.

When it comes to housing, many people are in a bind. Their incomes aren't high enough to afford safe, well-maintained homes, but there just isn't enough public housing to go around, and Housing Choice Vouchers are hard to come by. Prospective residents may have

some understanding of other federal housing programs, such as Public Housing or Section 8, but they may not be aware of how the LIHTC program differs.

To help you explain the LIHTC program to prospective residents, we've prepared a Model Memo:

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THE FAQ MAY KEEP SOME PROSPECTS FROM APPLYING FOR SITES THEY WOULDN'T QUALIFY FOR.

Introduction to LIHTC Housing for Prospective Renters. It covers frequently asked questions (FAQ) on applying and qualifying for LIHTC sites. With a general understanding of the program, prospective residents will be better prepared to proceed with their applications and determine whether LIHTC housing is right for them.

How FAQ Helps

There are many benefits to presenting the LIHTC program upfront with a FAQ to prospective residents and leasing staff. With accessible information, prospective residents gain confidence to begin and work through the application process.

The FAQ will let them know whether or not the LIHTC housing suits their situation and cuts down on time and energy in applying for sites they wouldn't qualify for. Applicants feel empowered when there's transparency around requirements, which contributes to a positive overall experience if they plan to apply for a unit at your site.

Equally important are the benefits to owners and managers of the LIHTC properties. With upfront answers to

such commonly asked questions, the site manager minimizes ineligible applicants and can focus on ones who may possibly qualify. One will also develop better relations with prospective residents by having better communication and reducing misunderstandings or possible disputes. Addressing these topics at the beginning of the process helps ensure compliance with the program regulations.

What FAQ Covers

This FAQ provides an overview of LIHTC basics that may be of high concern to prospective renters. It points out how LIHTC is different from other federal housing programs because of how it determines rent and the fact that it's operated by private entities and not the government.

Eligibility. Much of the FAQ deals with eligibility criteria. It stipulates that the income limits are what dictate whether a household qualifies for housing under LIHTC. Other possible affecting conditions might be the number of household members, their credit history, criminal backgrounds, to name a

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few. There is also information on eligibility of students; about special consideration seniors may have; and other priority categories such as recent veterans or youth from foster homes.

Calculating rents. The FAQ emphasizes that rents are not derived based on the income of a specific tenant but rather by unit size and type, along with area median income limits. It goes ahead to address how utility costs are factored in as total housing costs via a utility allowance.

Criminal, credit history. Applicants with

criminal or poor credit histories are also provided information. Sites are allowed to screen tenants based on their background, but such decisions must be in compliance with fair housing laws.

VAWA protections. The FAQ highlights protections for vulnerable groups, especially survivors of domestic violence, sexual assault, or stalking. It describes the protections provided under the Violence Against Women Act, ensuring that survivors cannot be denied housing or penalized because of circumstances related to their victimization.

MODEL FORM

INTRODUCTION TO LIHTC HOUSING FOR PROSPECTIVE RENTERS

Welcome to LIHTC (Low-Income Housing Tax Credit) housing! Whether you are new to affordable housing or exploring your options, understanding how the LIHTC program works is crucial to navigating the application and qualification process. LIHTC housing provides an opportunity for households to access safe, affordable homes while offering certain unique rules and requirements that set it apart from conventional housing.

To help you get started, we've created this FAQ to explain the basics of LIHTC housing. Once you have a general understanding, you'll be better prepared to proceed with your application and determine whether LIHTC housing is right for you.

How is LIHTC housing different from Section 8 and public housing?

The Low-Income Housing Tax Credit is a federal program that finances the construction and rehabilitation of rent-controlled housing for lower-income households. Most LIHTC properties are developed and managed by for-profit private companies or nonprofit entities, rather than being owned by the government or classified as public housing.

Another federal program, the Section 8 program, uses rent subsidies based on a tenant's income to make housing more affordable. Some LIHTC properties have Section 8 contracts that help tenants pay their rent, but most do not.

Public housing, on the other hand, is owned and operated directly by governmental entities. While distinct, the three programs—LIHTC, Section 8, and public housing—do interact to some degree. For example, Section 8 vouchers can be applied both to tax-credit properties and to market-rate housing.

Who qualifies to live in LIHTC housing?

LIHTC homes are available for rent to the general public. However:

- All LIHTC properties have maximum income limits.
- LIHTC properties may establish reasonable eligibility criteria that are included in a written tenant selection plan. You can ask the property manager for a copy of this plan.
- The property manager may have other requirements, such as minimum income, minimum credit scores, and background checks. This information will be in a tenant selection plan for the site.
- The property manager may set a maximum household size depending on the number of bedrooms. This should also be in the tenant selection plan.
- LIHTC buildings are allowed to give priority to certain groups of people, such as veterans, youth aging out of the foster care system, or current residents of the city or town where the property is located. People with disabilities get priority for accessible units.
- Some LIHTC properties are only for seniors. There are two different types of senior properties. In one, everyone in the household has to be 62 or older. In the other, one person in the household must be 55 or older. Check with the property manager of the apartments you are interested in.
- If you are a student, read the answer to the question "Can I Qualify if I am a Full-Time Student?" below.

Do I qualify?

Your income must be less than the maximum income limit, but the limit varies depending on which unit you apply for and where it is located. LIHTC developments are set up to house people in a variety of income levels.

LIHTC defines "low-income" using a measure called Area Median Income, often abbreviated "AMI." "Median" means "middle;" half the incomes in an "area" are above the AMI and half are below. "Area" generally refers to a city, county, or multi-county location.

The AMI varies depending on what county you are in and how many people are in your household. A county's AMI changes every year. The manager can give you a list of the AMI breakdown for the apartments in a LIHTC site.

How much will I pay in rent?

The LIHTC program sets rents based on affordability for different AMI levels rather than adjusting to each tenant's individual income. Unlike programs such as Housing Choice Vouchers, LIHTC rents do not automatically change when your income rises or falls. This means that your rent could increase slightly each year even if your income remains unchanged. Additionally, larger units typically cost more than smaller ones.

LIHTC sites set rents for low-income units by taking 30 percent of the appropriate income limit. That income limit depends on the percentage of AMI the owner agreed on with the state housing agency, the particular household size, and the location of the site.

Although the program aims to make rents affordable, many households end up paying more than 30 percent of their income toward rent and utilities. This occurs because maximum rents (the most you could potentially pay for a LIHTC unit) are set assuming the tenant makes the maximum income for an apartment. Remember that instead of being tailored to individual incomes, rents are based on the unit's size (number of bedrooms) and type (AMI income limit). If you earn less than the maximum amount you might still qualify for the unit but will pay more than 30 percent of your income for rent and utilities. And if you are a LIHTC tenant with Section 8 assistance, your rent share will follow Section 8 rules instead of LIHTC guidelines.

What about utilities?

Sometimes tenants pay for utilities separately; other times the cost of utilities is included in the rent. In either case, the LIHTC program considers utilities to be part of the total housing cost.

So, if the apartment you are renting does not include all utilities, the owner must subtract an estimated utility cost from the maximum rent. This is called the "utility allowance." Utility allowances vary from property to property, depending on what utilities the tenants must pay themselves, as well as how energy efficient the building is. Telephone, cable, and internet are not included in the utility allowance. The tenant pays these bills in addition to paying rent.

The utility allowance is just an estimate. The owner does not need to give the tenant a refund or rent reduction if actual utility costs are higher, so tenants need to be aware of their utility usage.

Can I qualify if I am a full-time student?

The LIHTC program was designed for low-income households and not as student housing. For that reason, there are many rules for full-time students seeking LIHTC housing. You can be a student and live in a LIHTC apartment as a member of a household, as long as at least one person in the household is not a full-time student. There are some exceptions to this rule:

- The full-time adult students are married and filing a joint federal income tax return.
- The full-time student is receiving assistance under Temporary Assistance for Needy Families (TANF).
- The full-time student is enrolled in certain job-training programs.
- The full-time student is a single parent living with their minor children.
- The full-time student is/was a recipient of foster care assistance.

I have a criminal history/poor credit. Can I still rent a LIHTC unit?

It depends. LIHTC managers can review your rental history and criminal background, and they may reject you if you do not meet their standards.

However, a site that turns away everyone with any criminal background might be violating fair housing laws, particularly if that ends up excluding mostly African Americans or other "protected classes" under the Fair Housing Act. In general,

having a conviction for misdemeanors or minor criminal offenses, such as drug possession or shoplifting, or for any crime that occurred in the distant past, should not be a basis for excluding someone.

Also, an arrest that did not result in conviction should not be a reason for denying an application. If you have a recent conviction for drug manufacture or for a violent crime like armed robbery or rape, owners may reject your application. And if a LIHTC site has public housing funding, it is required to reject lifetime sex offenders and people convicted for manufacturing methamphetamine in subsidized housing. LIHTC owners will decide each situation individually and give each applicant the opportunity to explain why they can be a good tenant, despite a criminal record.

In addition, while perfect credit is not required, LIHTC sites may decline applicants with poor credit histories. They are typically most concerned with issues such as prior evictions or utility shutoffs. If you have a previous eviction, the manager may request evidence that all outstanding rent has been paid in full. Similarly, if there have been utility shutoffs, they may ask for a statement from the utility company confirming your eligibility for a new account. If you are concerned about being denied due to poor credit or a past eviction, it's a good idea to provide additional supporting information with your application. For example, you could demonstrate that your previous housing was unaffordable but that you are now financially capable of paying the LIHTC rent.

What if I am a survivor of domestic violence or sexual assault?

You may not be denied admission to a LIHTC property just because you were the victim of domestic violence, sexual assault, dating violence, or stalking, or your credit was damaged by one of those situations. If you are a survivor, you may have protections under the Violence Against Women Act (VAWA). VAWA protects all survivors, regardless of your sex, gender identity, or sexual orientation AND regardless of the sex, gender identity, or sexual orientation of the person who harmed you.

IN THE NEWS

Trump Nominates Bessent as Treasury Secretary, Turner for HUD

If they're confirmed, expect stricter oversight of the LIHTC program and deep cuts for HUD funding.

President-elect Donald Trump has nominated Scott Bessent to lead the Treasury Department and Scott Turner as Secretary of Housing and Urban Development (HUD). If confirmed by the Senate, Bessent will oversee the U.S. Department of the Treasury, which includes the Internal Revenue Service (IRS). Bessent, CEO of investment firm Key Square Group, formerly worked for Soros Fund Management.

Turner is a former NFL player who has more experience in political office than Bessent. He served two terms in the Texas House of Representatives representing the 33rd district. In this office, Turner served on the government transparency and operation committee, the government efficiency and reform committee, the human services committee, the select committee on federalism and fiscal responsibility, and the international trade and intergovernmental affairs committee. If confirmed, he will have oversight of all HUD's programs, including Public Housing, Section 8, and other programs that intersect with the Low-Income Housing Tax Credit (LIHTC) program.

IRS Priorities Under a Second Trump Presidency

The nomination of Scott Bessent as Secretary of the Treasury could bring significant changes to the IRS and its administration of the LIHTC program. Bessent has been vocal about his views

on fiscal policy, describing the Inflation Reduction Act as a “doomsday machine for the budget.” The Inflation Reduction Act allocated substantial funds to the IRS to enhance enforcement. Trump's administration may seek to reallocate or reduce this funding, potentially shifting the agency's focus and resources.

Bessent's focus on deficit reduction and suggestions to repeal or limit certain tax credits to offset the costs of extending tax cuts indicate a possible shift in policy direction. Under his leadership, the IRS might prioritize stricter oversight and reevaluation of existing tax credit programs to ensure they align with fiscal responsibility goals. Overall, Bessent's nomination signals a potential move toward fiscal conservatism, which may influence how the IRS manages tax credit programs, including LIHTC.

Along with his nomination of Bessent, Trump has announced that he intends to appoint Billy Long, who served as the U.S. representative for Missouri's 7th congressional district from 2011 to 2023, to serve as the next IRS Commissioner. Long is known for his conservative stance and advocacy for small businesses. His background includes work as an auctioneer and business advisor, with limited direct experience in tax administration. Long's conservative approach and emphasis on reducing federal regulations could influence the administration of various tax credit programs, including LIHTC.

HUD's Prospects Under a Second Trump Presidency

If confirmed, Scott Turner will enter the role of HUD Secretary at a time when housing affordability is a growing concern. Trump's campaign talked about addressing high housing costs, though much of his rhetoric was based on the premise of a clampdown on illegal immigration and inflation rather than affordable housing policies. One theme that has been evident throughout Trump's first presidency and campaign is budget austerity, which could spell deep cuts for HUD funding.

In his first presidency, cuts to HUD's budget met resistance in Congress, which, for example, has kept core programs like Section 8 housing vouchers and public housing intact. But a second term is expected to bring even more fiscal conservatism. Any budget cuts will grow wait lists and further squeeze the tightening affordable housing market.

HUD policy in the second presidency may experience potential influence by Project 2025. This is a published policy blueprint from the Heritage Foundation, a conservative think tank, working in concert with more than 100 organizations. It lays out a roadmap for a future conservative U.S. president to take the lead in restructuring many facets of federal agencies and policies and reforming the federal government while solidifying executive power. It includes a chapter on housing policy by former HUD Secretary Ben Carson, who led the agency from 2017 to 2021. This section may lay the groundwork for projects that Turner might build on, such as nurturing public-private partnerships and revisiting various regulations. The Project 2025 housing proposals include:

- A ban on families with undocumented members from living in federally assisted housing. Undocumented immigrants are already barred from receiving subsidies.
- Repealing again the Affirmatively Furthering Fair Housing rule, which mandates that local governments address segregation and promote fair housing.
- Ending Housing First policies, which places people in subsidized housing without preconditions. The focus would instead be on programs that encourage self-sufficiency and having sobriety be the first requirement.
- Implementing time limits and work requirements for people who receive federal housing subsidies.

Senate Confirmation Process

The Senate confirmation hearings for all three men are expected in January 2025. The Senate Committee on Banking, Housing, and Urban Affairs will assess Turner's suitability for leading HUD. And the Senate Finance Committee will conduct hearings to evaluate Bessent and Long's qualifications and views on economic policy.

Given his background as a hedge fund manager and advocate for deficit reduction and deregulation, senators will probably examine Bessent's stance on tariffs and fiscal policy. And the committee will seek Long's perspectives on tax administration and enforcement.

Following the hearings, each committee will vote to recommend the nominee favorably, unfavorably, or without recommendation to the full Senate. The full Senate will debate each nomination. A simple majority vote is required for confirmation.

USDA Prioritizes Loans for LIHTC Sites Waiving Qualified Contract Rights

The QC loophole has cost an estimated loss of 6,000 to 10,000 affordable units a year.

USDA's Rural Housing Service (RHS) recently announced changes in its Section 538 Guaranteed Rural Rental Housing Program (GRRHP). The program works with qualified private-sector lenders to provide financing to qualified borrowers to increase the supply of affordable rental housing for low- and moderate-income individuals and families in eligible rural areas and towns. Under the program, RHS offers guarantees of up to 90 percent of the loan amount. For-profit entities may borrow up to 90 percent and non-profit entities may borrow up to 97 percent of the total development cost or appraised value, whichever is less.

The program encourages cooperation among the USDA, private lenders, and other public agencies in addressing rural housing needs by guaranteeing loans. New multifamily construction, acquisition and rehabilitation, and revitalization of older stock, including projects previously developed under USDA's Section 515 and 514 programs, are all eligible for GRRHP funding. These can be financially viable through various combinations of financing sources, including federal and state funds, tax-exempt bonds, and LIHTCs.

With the recently announced changes RHS will give priority to projects of affordable housing that give up Qualified Contract (QC) rights. This initiative is part of a broader initiative at the federal level to address the serious shortage of affordable housing and make sure that certain loopholes in the

LIHTC program don't enable existing units to be removed from the program.

Qualified Contract Loophole

The QC loophole in the LIHTC program is one of the major focuses of the new updates. The LIHTC program offers developers tax credits in exchange for committing to keep rents affordable for at least 30 years. However, the statute allows property owners to opt out of this commitment after only 15 years via the qualified contract provision. This loophole enables owners to apply to state agencies to buy their building at a price determined by a statutory formula that's generally above market value for buildings subject to rent restrictions.

Unless the state or local agency can find a buyer within that year, the site can exit the program's affordability restrictions and convert units to market rates. Originally intended to attract investors by offering an exit strategy, this provision has increasingly weakened the program's goals. Experts estimate that over time, the loophole has cost 115,000 units of affordability and, each year, the loss is estimated at between 6,000 and 10,000 units.

Other federal agencies, such as HUD and the Federal Housing Finance Agency (FHFA), have each taken steps or announced an intention to take action to mitigate the use of qualified contracts. HUD's Office of Multifamily Housing has issued a proposed notice that would restrict access to Federal Housing Administration Multifamily rental

and Risk Share insurance programs to LIHTC owners who agree to waive any right to request a qualified contract. In late 2023, FHFA issued guidance to Fannie Mae and Freddie Mac barring the government-sponsored enterprises from becoming equity investors in sites for which the owner has not waived its right to a qualified contract. And recently, the Treasury Department has expressed the need for limitations to QCs to protect affordable housing, encouraging state agencies and federal programs to make waiver requirements for QC rights a condition of funding eligibility.

USDA's New Policy

The revised GRRHP framework gives

higher scoring priority to projects that waive QC rights, in line with the federal priorities to maximize affordability in LIHTC-supported housing. In this regard, applicants who use LIHTC financing and commit to long-term affordability by forgoing QCs will be better positioned for access to GRRHP funding.

By integrating GRRHP with LIHTC financing, the program maximizes its impact through getting owners to commit to longer periods of affordability. The changes demonstrate the USDA's commitment to preserving and expanding the stock of affordable housing in the face of a continuing housing affordability crisis, particularly in rural areas.

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