

Low-Income Housing Tax Credits

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Administering Agency: Internal Revenue Service (IRS) of the Department of the Treasury at the federal level and Housing Finance Agencies at the state level.

Year Started: 1986

Number of Households Served: HUD's Office of Policy Development and Research [reports: https://bit.ly/3EDoegP](https://bit.ly/3EDoegP) that 53,032 projects and 3.65 million housing units were placed in service between 1987 and 2022.

Population Targeted: Generally, households with income either equal to or less than 60% of area median income (AMI) or 50% AMI, but also 80% AMI since "income averaging" was introduced after 2018.

Funding: A December 12, 2024 [report: https://www.jct.gov/publications/2024/jcx-48-24/](https://www.jct.gov/publications/2024/jcx-48-24/) from the Joint Committee on Taxation estimates \$13.7 billion in foregone tax revenues ("tax expenditures") for 2025, growing to \$14.4 billion for 2026. For the period 2024 through 2028, the total foregone tax revenue is estimated to be \$72 billion. In addition, the Joint Committee estimates forgone taxes from the exclusion of interest on state and local government qualified private activity bonds for rental housing to be an additional \$1.5 billion for 2025, growing to \$1.6 billion for 2026. For the period 2024 through 2028, the total foregone tax revenue is estimated to be another \$8 billion.

The Low-Income Housing Tax Credit program (LIHTC) finances the construction, rehabilitation, and preservation of housing affordable to lower-income households. The LIHTC program encourages private investment by providing a tax credit: a dollar-for-dollar reduction in federal taxes owed on other income. Although the LIHTC program is federal, each state (and some localities) has an independent agency,

generally called a housing finance agency (HFA) that decides how to allocate the state's share of federal housing tax credits within a framework formed by the Internal Revenue Code.

History

The LIHTC program was created by the "Tax Reform Act of 1986" and is codified at Section 42 of the Internal Revenue Code, 26 U.S.C. 42, so tax credit projects are sometimes referred to as "Section 42" projects. The IRS provides additional guidance through regulations (Title 26 –Chapter I - Subchapter A - Part 1 §1.42), revenue rulings, revenue procedures, notices, technical advice memorandums, private letter rulings, and other means.

Program Summary

The LIHTC program finances the construction, rehabilitation, and preservation of housing for lower-income households. LIHTC can be used to support a variety of projects: multifamily or single-family housing, new construction or rehabilitation, special needs housing for elderly people or people with disabilities, and permanent supportive housing for families and individuals experiencing homelessness. Although the LIHTC program is federal, each state (and some localities) has an independent housing finance agency (HFA) that decides how to allocate the state's share of LIHTC, which is based on each state's population.

LIHTC is designed to encourage corporations and wealthy private individuals to invest cash in housing for lower-income people; generally, those with income equal to or less than 60% of the area median income (AMI) or 50% AMI, but also 80% AMI since "income averaging" was introduced after 2018 (explained below). LIHTC provides this encouragement by providing a tax credit to the investor over the course

of a 10-year “credit period,” a dollar-for-dollar reduction in federal taxes owed on other income. The cash that investors put up, called “equity,” is used along with other resources such as the HOME Investment Partnerships program (HOME), the national Housing Trust Fund (HTF), or state housing program funds to build new affordable housing or to make substantial repairs to existing affordable housing. LIHTC is not meant to provide 100% financing. The infusion of equity reduces the amount of money a developer must borrow and pay interest on, thereby reducing the rent level that needs to be charged.

LIHTC Units

Until 2018, when applying to an HFA for tax credits, a developer had two lower-income unit set-aside options and had to stick with the chosen option during a required lower-income occupancy period. “Income averaging” was introduced in 2018 by the “Consolidated Appropriations Act of 2018.”

The two traditional lower-income unit set-aside choices are:

- Ensuring that at least 40% of the units are rent-restricted and occupied by households with income equal to or less than 60% of AMI.
- Ensuring that at least 20% of the units are rent-restricted and occupied by households with income equal to or less than 50% of AMI.

For projects using one of the two traditional set-aside choices, tax credits are available only for rental units that meet one of the above rent-restricted minimums (40/60 or 20/50). With these minimums it is possible for LIHTC projects to have a mix of units occupied by people of lower, moderate, and middle incomes. These are minimums; projects can have higher percentages of rent-restricted units occupied by lower-income people. In fact, the more rent-restricted lower-income units in a project, the greater the amount of tax credits provided. New developments should balance considerations

of the need for more units with the value of mixed-income developments and with concerns about undue concentrations of lower-income households in certain neighborhoods.

The FY18 appropriations act added a third option – “income averaging,” now frequently referred to as the “average income test” (AIT). This allows developers who choose the income averaging option to commit at least 40% of a property’s units to an average designated income limit of no more than 60% AMI, with rents set at a fixed amount of 30% of a unit’s designated income limit. The developer decides the mix of designated income limits. The designated income limits may be in 10% increments from 10%, 20%, 30%, 40%, 50%, 60%, 70%, up to 80% of AMI. A unit can only be occupied by a household with income equal to or less than the unit’s designated income with the rent for that unit fixed at 30% of the designated income limit (except any units designated 10% AMI units will be counted as 20% AMI units for income averaging). For example, if a unit is designated at 20% AMI, the household’s income must be equal to or less than 20% AMI and the maximum rent is capped at 30% of 20% AMI. If a unit is designated at 80% AMI, the household’s income must be equal to or less than 80% AMI and the maximum rent is capped at 30% of 80% AMI.

The purpose of the income averaging option is to enable developers to offset lower rents for extremely low-income households by charging higher rents to households with income greater than the more traditional 60% AMI level. Advocates had some initial concerns about this new option, as discussed in the “Issues and Concerns” section of this article. On October 12, 2022, IRS published [final regulations: https://www.govinfo.gov/content/pkg/FR-2022-10-12/pdf/2022-22070.pdf](https://www.govinfo.gov/content/pkg/FR-2022-10-12/pdf/2022-22070.pdf) for AIT.

According to [NLIHC’s research team: https://www.huduser.gov/portal/periodicals/cityscape/vol26num2/ch11.pdf](https://www.huduser.gov/portal/periodicals/cityscape/vol26num2/ch11.pdf), based on HUD data from 2019 (the most recent available), approx-

imately 50% of LIHTC households had income equal to or less than 30% AMI (are “extremely low income,” ELI), and 69.2% of these ELI LIHTC households also had other forms of rental assistance, such as Housing Choice Vouchers. Among ELI LIHTC households who received rental assistance, 17.1% were “moderately” cost-burdened, spending between 31% and 50% of their income on rent and utilities. An additional 15.8% of ELI LIHTC households were “severely” cost-burdened, spending more than 50% of their income on rent and utilities, even though they received rental assistance. Overall, 32.9% of ELI LIHTC households had some form of cost burden – even though they had rental assistance. For ELI LIHTC households who did not receive any form of rental assistance, 77.3% had some degree of cost burden; 18.2% were moderately cost-burdened while 59.1% were severely cost-burdened.

LIHTC Rents

Rent-restricted units have fixed maximum gross rents, including allowance for utilities, that are equal to or less than the rent charged to a hypothetical tenant paying 30% of 60% of AMI or 50% of AMI, or one of the designated increments in an income averaging project – whichever option a developer has chosen. Tenants may have to pay rent up to that fixed maximum tax credit rent even if it is greater than 30% of their income. In other words, the maximum rent a tenant pays is not based on 30% of the tenant’s income; rather it is based on 30% of the fixed AMI level (for example, 60% or 50% for the two traditional options).

Consequently, lower-income residents of tax credit projects might be rent-burdened, meaning paying more than 30% and even 50% of their income for rent and utilities. Or, LIHTC projects might simply not be financially available to extremely low-income households (those with income less than 30% of AMI) or very low-income households (those with income less than 50% of AMI) because rents charged

are not affordable to them. HUD’s tenant-based or project-based vouchers or U.S. Department of Agriculture Rural Development Section 521 Rental Assistance is often needed to fill the gap between 30% of a resident’s actual income and the tax credit rent.

HUD’s Office of Policy Development and Research (PD&R) announced on April 1, 2024 its annual income limits data sets, including a 10% limit on rent increases in LIHTC properties. Under LIHTC, rents can increase annually by 5% or two times the percentage change in the national median income, whichever is higher. PD&R’s new cap limits rent increases to no more than 10%, regardless of the national median income change. It is not clear if the 10% cap only applies to FY24 or if it is permanent.

Lower-Income Occupancy Period

The law requires units to be “rent-restricted” and occupied by income-eligible households for at least 15 years, called the “compliance period,” with an “extended use period” of at least another 15 years for a total of 30 years. Some states require low-income housing commitments (“restricted-use periods”) greater than 30 years or provide incentives for projects that voluntarily agree to longer commitments. An NLIHC report, [*Balancing Priorities: Preservation and Neighborhood Opportunity in the Low-Income Housing Tax Credit Program Beyond Year 30*](https://nlihc.org/research/balancing-priorities): <https://nlihc.org/research/balancing-priorities>, found that 8,420 LIHTC properties accounting for 486,799 LIHTC units will reach Year 30 between 2020 and 2029. This is nearly 25% of all current LIHTC units. Another NLIHC report, [*2024 Picture of Preservation*](https://bit.ly/42LIC8S): <https://bit.ly/42LIC8S>, estimated that rent restrictions will expire for 538,418 LIHTC units by 2034.

Where states do not mandate longer restricted-use periods, an owner may submit a request to an HFA to sell a project or convert it to market rate during year 14 of the 15-year compliance period. The HFA then has one year to find

a buyer willing to maintain the rent restrictions for the balance of the 30-year period. If the property cannot be sold to such a “preservation purchaser,” then the owner’s obligation to maintain rent-restricted units is removed and lower-income tenants receive “enhanced vouchers” (See the *Tenant Protection Vouchers* section in Chapter 4 of this guide.) enabling them to remain in their units for three years. This Year 15 option is called the “Qualified Contract” (QC) and is discussed in the “Issues and Concerns” section of this article. [2024 Picture of Preservation: https://bit.ly/42LIC8S](https://bit.ly/42LIC8S) estimates that 155,555 homes awarded LIHTC subsidy since 1990 lost their affordability restrictions after 15 years, suggesting they may have exited through the QC process.

HFAs must monitor projects for compliance with the income and rent restriction requirements. The IRS can recapture tax credits if a project fails to comply, or if there are housing code or fair housing violations. However, the extent to which HFAs monitor compliance after the 10-year credit period and following 5-year “recapture period” is not clear (see the “Issues and Concerns” section of this article).

Program Structure

Although LIHTC is a federal program, each state has a housing finance agency (HFA) that decides how to award tax credits to projects. Tax credits have two levels: 9% and 4% (discussed further below). The 9% tax credits are allocated to states by the U.S. Treasury Department based on a state’s per-capita population along with an inflation factor. In 2025, each state will receive \$3 per capita (up from \$2.90 in 2024, \$2.75 in 2023, \$2.60 in 2022, and \$2.81 in 2021 and 2020), with small states receiving a minimum of \$3,455,000 (up from \$3,360,000 in 2024, \$3,185,000 in 2023, \$2,975,000 in 2022, and \$3,250,000 in 2021, which was a slight increase from 2020). Developers apply to an HFA and compete for 9% LIHTC allocations. Because there is a fixed amount of 9% tax credits, they are very competitive.

However, there is no direct limit on the amount of 4% tax credits an HFA can award. Instead, the 4% tax credit amount a state can award is indirectly limited by the amount of a state’s Private Activity Bond (PAB) volume cap. In addition to housing, PABs can be used for a variety of privately developed projects such as, nonprofit hospitals or universities, manufacturing facilities, mass commuting facilities, water and sewer facilities. See the “Housing Bonds” article in Chapter 5 of this *Advocates’ Guide* for more information about bonds. The 4% tax credit can only be used in conjunction with a tax-exempt private activity bond. For a multifamily bond-financed development to receive the full amount of a 4% tax credit, at least 50% of the development’s aggregate basis (land and building) must be initially financed with tax-exempt multifamily bond authority from the state’s PAB volume cap. For 2025, the state per capital PAB multiplier is \$130 or a minimum of \$388,780,000.

Each HFA must have a “Qualified Allocation Plan” (QAP) that sets out the state’s priorities and eligibility criteria for awarding LIHTCs, as well as tax-exempt bonds and any state-level tax credits. More about QAPs is presented later in this article. The law requires that a minimum of 10% of an HFA’s total LIHTC be set aside for nonprofits.

LIMITED PARTNERSHIPS

Once awarded tax credits, a developer then sells them to investors, usually to a group of investors (nearly 99% of the tax expenditures go to corporations) pulled together by someone called a syndicator. Syndicators sometimes pool several tax credit projects together and sell investors shares in the pool. The equity that the investors provide, along with other resources such as conventional mortgages, state loans and grants, and funds from the HOME and HTF programs, is used by the developer to construct or substantially rehabilitate affordable housing.

The developer and investors form a “limited partnership” in which the developer is the “gen-

eral partner,” and the investors are “limited partners.” The general partner owns very little of the project (maybe as little as .01%) yet has a very active role in construction or rehabilitation and day-to-day operation of the completed project. The limited partners own most of the project (maybe up to 99.99%) but play a passive role; they are involved only to take advantage of the reduction in their annual federal tax obligations.

9% AND 4% TAX CREDITS

Two levels of tax credit are available, 9% and 4%, formally known as the “applicable percentages.” Projects can combine 9% and 4% tax credits. For example, existing buildings can be bought with 4% tax credits and then substantially rehabilitated with 9% tax credits. Instead of “9%” and “4%,” tax credits are sometimes referred to by the net present value they are intended to yield, either 70% or 30%. That is, in the case of a 9% tax credit, the stream of tax credits over the 10-year credit period has a value today equal to 70% of the eligible LIHTC development costs (the “Qualified Basis” explained below).

The 9% tax credit is available for new construction and substantial rehabilitation projects that do not have other federal funds. Federal funds include loans and bonds with below market-rate interest. Rehabilitation is “substantial” if a minimum amount is spent on each rent-restricted lower-income unit or if 10% is spent on the “eligible basis” (described below) during a 24-month period, whichever is greater. Each year IRS issues a revised minimum substantial rehab amount; for 2025 the amount increased from \$8,300 to \$8,500.

The 4% tax credit is available for three types of activities:

- Acquisition of existing buildings for substantial rehabilitation.
- New construction or substantial rehabilitation subsidized with other federal funds.
- Projects financed with tax-exempt Private

Activity Bonds (PABs). Every year, states are allowed to issue a set amount, known as the “volume cap,” of tax-exempt bonds for a variety of economic development purposes. In 2025 the PAB volume cap is \$130 per capita (up from \$125), with a small state minimum of \$388,780,000 (up from \$3.78 million).

The “Protecting Americans from Tax Hikes Act of 2015” permanently fixed the minimum applicable percentage at 9% for new or substantially rehabbed buildings placed in service after July 30, 2008. For many years before, 9% was only an approximate rate that varied monthly, the “appropriate percentage” (which if still floating would be 8.01% in December 2024).

However, that statute did not establish a fixed 4% applicable percentage rate. The 4% tax credit continued to float, until it was permanently fixed at a minimum of 4% by the FY21 appropriations act (if it had continued to float, the 4% tax credit would have had an applicable percentage rate of 3.43% for December 2024).

For any given project, the real tax credit rate is set the month a binding commitment is made between an HFA and developer, or the month a finished project was first occupied (referred to as “placed in service.”) This applicable percentage is applied to the “qualified basis” (described below) to determine the investors’ tax credit each year for 10 years (the “credit period”).

DETERMINING THE AMOUNT OF TAX CREDITS FOR A PROJECT

The amount of tax credit a project can receive, and therefore how much equity it can attract, depends on several factors. First, the “eligible basis” must be determined by considering costs such as building acquisition, construction, soil tests, engineering costs, and utility hookups. Land acquisition and permanent financing costs are not counted toward the eligible basis. The eligible basis is usually reduced by the amount of any federal funds helping to finance a project.

The eligible basis of a project can get a 30% increase, a “basis boost,” if the project is located in a census tract designated by HUD as a low-income tract (a Qualified Census Tract, or QCT) or a high-cost area (a Difficult to Develop Area, or DDA). QCTs are census tracts with a poverty rate of 25% or in which 50% of the households have income less than 60% of AMI. LIHTC projects in QCTs must contribute to a “concerted community revitalization” plan (discussed below in the Qualified Allocation Plan section). The aggregate population in census tracts designated as QCTs in a single metropolitan area cannot exceed 20% of that metropolitan area.

DDAs are areas in which construction, land, and utility costs are high relative to incomes. All DDAs in metropolitan areas (in the nation) taken together may not contain more than 20% of the aggregate population of all metropolitan areas. The “Housing and Economic Recovery Act” (HERA) expanded the use of the 30% basis boost to projects not located in QCTs or DDAs if an HFA determines that an increase in the credit amount is necessary for a project to be financially feasible. HFAs often use this discretionary 30% basis boost to facilitate affordable housing development for specific geographies or populations. Each year, [HUD updates a list of QCTs and DDAs: https://bit.ly/3GDtyRV](https://bit.ly/3GDtyRV).

Next, the “applicable fraction” must be determined. This is a measure of rent-restricted lower-income units in a project. Two percentages are possible: the ratio of LIHTC-financed lower-income units to all units in a project (the “unit fraction”), or the ratio of square feet in the LIHTC-financed lower-income units to a project’s total square feet (the “floor space fraction”). The applicable fraction agreed to by the developer and IRS at the time a building is first occupied (“placed in service”) is the minimum that must be maintained during the entire affordability period (“compliance period”).

The “qualified basis” is the eligible basis multiplied by the applicable fraction. The amount of

annual tax credits a project can get is the qualified basis multiplied by the tax credit rate (9% or 4%). The amount of tax credits available to a project is divided among the limited partners based on each limited partner’s share of the equity investment. Investors receive their share of the tax credit each year over the 10-year “credit period.”

A SIMPLE EXAMPLE

HUD’s HOME Program website gave a simple example (no longer available on HOME website):

Project will construct 70 units, 40% of them are income and rent restricted.

There are no other federal funds.

The example continues, noting that a limited partnership will buy the tax credits at \$0.75 for every dollar of future tax benefit (the tax credit “price”). Thus, the limited partnership will invest \$1,080,000 ($\$1,440,000 \times .75$) in the project today for a 10-year stream of future tax benefits amounting to \$1,440,000.

Qualified Allocation Plan (QAP)

The statute authorizing the LIHTC program requires each agency that allocates federal LIHTCs (usually HFAs) to have a Qualified Allocation Plan (QAP). Each state has an allocating agency and there are also a few local HFAs. The QAP sets out a state’s eligibility criteria and priorities for awarding federal LIHTCs to housing properties. In some states, the QAP also sets out threshold criteria for non-competitive 4% tax credits, any state LIHTC, and other state-funded housing programs. HFAs are listed by the [National Council of State Housing Agencies: https://www.ncsha.org/housing-help/](https://www.ncsha.org/housing-help/) (NCSHA) and the [Novogradac Corporation: https://bit.ly/3Ry6eY7](https://bit.ly/3Ry6eY7).

The QAP is a tool advocates can use to influence how their state’s share of annual federal LIHTCs is allocated to affordable housing properties. Advocates can use the public hearing and comment

Total development costs	\$5,000,000	
	Land Acquisition	\$1,000,000
	Construction	\$3,400,000
	Site Improvements	\$ 535,000
	Engineering	\$ 40,000
	Eligible Soft Costs	\$ 25,000
Eligible Basis: Total Development Cost - Land Acquisition = \$4,000,000		
Qualified Basis: Eligible Basis x Applicable Fraction (\$4,000,000 x .40) = \$1,600,000		
Annual Tax Credit: Qualified Basis x Tax Credit Rate (\$1,600,000 x .09) = \$144,000		
Total Amount of Tax Credits: \$144,000 x 10 years = \$1,440,000		

requirements to convince their housing finance agency to better target tax credits to properties with extremely low-income households, locate projects in priority areas (particularly to affirmatively further fair housing), and preserve the existing stock of affordable housing.

Each QAP must specify an HFA's minimal criteria and the priorities it will use to select projects competing for tax credits. The priorities must be appropriate to local conditions. The statute requires a QAP to give preference to projects:

- Serving residents with the lowest incomes.
- Serving income-eligible residents for the longest period.
- Located in HUD-designated QCTs, as long as the project contributes to a "concerted community revitalization plan" (QCTs are census tracts with a poverty rate of 25% or in which 50% of the households have income less than 60% of AMI). There is a fair housing-related issue concerning QCTs and "concerted community revitalization plans," discussed in the next section.

The QAP selection criteria must address 10 items: (1) location, (2) housing needs, (3) public housing waiting lists, (4) individuals with children, (5) special needs populations, (6) whether a project includes the use of existing housing as part of a community revitalization plan, (7)

project sponsor characteristics, (8) projects intended for eventual tenant ownership, (9) energy efficiency, and (10) historic nature. These requirements are minimums, states may adopt more rigorous criteria that target advocates' priority populations and locations. Most states establish detailed QAP selection criteria and set-asides based on the characteristics of their state's needs.

HFAs may target tax credits in several ways:

- The QAP selection process may give preferences, in the form of extra points, to encourage developers to submit projects more likely to serve particular populations or locations; for example, by awarding 10 points to projects that set aside 10% of the units for special needs populations.
- The QAP may establish a set-aside, reserving a specific percentage or dollar amount of any given year's tax credit allocation for projects more likely to serve specific populations or locations. For example, there may be a \$20 million set-aside for rural projects.
- The QAP may establish thresholds or minimum requirements that projects must meet simply to get in the game, thus improving targeting to specific populations or locations. For example, they may require a 50-year income-eligible, rent-restricted compliance period.

QAPs and Fair Housing

In December 2016, IRS issued [Notice 2016-77: https://www.novoco.com/sites/default/files/atoms/files/notice_16-77.pdf](https://www.novoco.com/sites/default/files/atoms/files/notice_16-77.pdf) stating that QAPs may only give preference to projects in QCTs if there is a “concerted community revitalization plan” and only if that plan contains more components than just the LIHTC project. That Notice observed that in some cases HFAs have given preference to projects located QCTs without regard to whether the projects would contribute to a concerted community revitalization plan. In other cases, because development of new multifamily housing benefits a neighborhood, a LIHTC project without other types of community improvements has been treated as if it alone constituted a concerted community revitalization plan. IRS declared that simply placing a LIHTC project in a QCT risks increasing concentrations of poverty. Therefore, a QCT preference should only occur when there is an added benefit to the neighborhood in the form of the project’s contribution to a concerted community revitalization plan. The Notice requested public input to define “concerted community revitalization plan” because the IRS Code does not have a definition. To date, the IRS has not proposed a definition of a “concerted community revitalization plan.”

The Internal Revenue Service (IRS) also issued [Revenue Ruling 2016-29: https://www.irs.gov/pub/irs-drop/rr-16-29.pdf](https://www.irs.gov/pub/irs-drop/rr-16-29.pdf) in 2016, holding that the IRS Code does not require or encourage HFAs to reject proposals that do not obtain the approval of the locality where a project is proposed to be developed. Revenue Ruling 2016-29 notes that the IRS Code does require HFAs to notify the chief executive officer of the local jurisdiction where a proposed LIHTC-assisted property is to be located, and to provide that individual with a reasonable opportunity to comment on the project. However, the IRS states that this is not the same as requiring the jurisdiction’s approval. The Revenue Ruling declares that the Code does not require or

encourage HFAs to bestow veto power over LIHTC projects either on local communities or on local public officials.

The Revenue Ruling 2016-29 presents a hypothetical situation in which a QAP requires an HFA to reject a LIHTC application if a proposed project does not secure local approval. The Revenue Ruling observes that securing local approval is much more likely if a proposed LIHTC project is to be located in an area with a greater proportion of minority residents and fewer economic opportunities than in higher-opportunity, non-minority areas. IRS states that this creates a pattern of allocating LIHTCs to projects in predominantly lower-income or minority areas, perpetuating residential and economic segregation. This practice, “therefore, has a discriminatory effect based on race,” which is a protected class under the Fair Housing Act of 1968.

The Poverty & Race Research Action Council (PRRAC) paper, [Building Opportunity III: https://bit.ly/3S6Xvwc](https://bit.ly/3S6Xvwc) provides QAP affirmatively furthering fair housing issues and examples from states of QAP policies that hinder or foster fair housing.

Issues and Concerns

Advocates have concerns about five practices that can affect LIHTC properties keeping income and rent restrictions: properties reaching Year 30 and the potential loss of rent-restricted units, Qualified Contracts (QCs), Right of First Refusal (ROFR) and “aggregators,” “planned foreclosures,” and the extent that HFAs monitor projects for compliance with income and rent restrictions for the full 30-year (or longer) extended use period.

BEYOND YEAR 30

An NLIHC report, [Balancing Priorities: Preservation and Neighborhood Opportunity in the Low-Income Housing Tax Credit Program Beyond Year 30: https://nlihc.org/research/balancing-priorities](https://nlihc.org/research/balancing-priorities), found that 8,420 LIHTC properties

accounting for 486,799 LIHTC units will reach Year 30 between 2020 and 2029. This is nearly 25% of all current LIHTC units. For-profit owners have 336,089 (69%) of these units, placing the units at risk after Year 30. At least 81,513 (17%) of these units have nonprofit owners so they will likely continue to operate as “affordable” housing if there is adequate support to make needed repairs for aging units.

Between 2020 and 2029, 42% of the LIHTC units losing their affordability restrictions are in neighborhoods with very low desirability and 26% are in low desirability neighborhoods. It is these units that are likely to face the most significant challenges of meeting capital needs for rehabilitation because they can only rely on lower rental income.

On the other hand, 10% of the LIHTC units with expiring affordability restrictions are in high desirability neighborhoods and another 5% are in very high desirability neighborhoods. For-profit developers own 36,282 units in high desirability neighborhoods and another 16,641 units in very-high desirability neighborhoods. These units owned by for-profit entities are likely at the greatest risk of being repositioned as market-rate housing.

QUALIFIED CONTRACTS

As explained earlier, an owner may submit a request to an HFA to sell a project or convert it to market rate during year 14 of the 15-year compliance period. This is called a “Qualified Contract” (QC). The HFA then has one year to find a buyer willing to maintain the income and rent restrictions for the balance of the 30-year period. If the property cannot be sold to such a “preservation purchaser,” then the owner’s obligation to maintain income- and rent-restricted units is removed, and the lower-income tenants receive enhanced vouchers enabling them to remain in their units for three years (for more about enhanced vouchers, see “Tenant Protection Vouchers” in Chapter 4 of this *Advocates’ Guide*). The IRS code specifies the price

that a preservation purchaser must pay in a QC situation, and in most cases the price is far greater than the market price as affordable housing. Consequently, preservation purchasers are unable to acquire a LIHTC property at year 15, the property converts to market-rate, and income and rent restrictions are removed.

In [2024 Picture of Preservation: https://bit.ly/42LIC8S](https://bit.ly/42LIC8S) NLIHC estimates that 155,555 homes awarded LIHTC subsidy since 1990 lost their affordability restrictions after 15 years, suggesting they may have exited through the QC process.

According to the [National Housing Trust \(NHT\): https://bit.ly/4iABzVI](https://bit.ly/4iABzVI), to prevent the loss of affordable housing, 39 HFA’s QAPs require LIHTC applicants to waive their right to a QC and another nine HFAs give extra competitive points to proposals agreeing to waive the right to a QC. Some HFAs inform LIHTC applicants that if they eventually seek a QC, they will not be allowed to apply for LIHTCs in the future. NHT has additional information about QCs here.

The National Council of State Housing Agencies updated its “[Recommended Practices in Housing Credit Administration](https://www.ncsha.org/resource/ncsha-recommended-practices-in-housing-credit-administration/)”: <https://www.ncsha.org/resource/ncsha-recommended-practices-in-housing-credit-administration/> in October 2023. It recommended that all states should require LIHTC applicants to waive their right to a QC for both 9% and 4% LIHTCs. In addition, it recommended that QAPs include disincentives for owners of existing LIHTC properties to seek a QC (for example, by awarding negative points in the event an owner applies for future LIHTCs).

The “Decent, Affordable, Safe Housing Act for All (DASH) Act,” introduced by Senator Ron Wyden, D-OR and the “Save Affordable Housing Act of 2023” introduced by Representative Joe Neguse (D-CO) propose eliminating the QC loophole.

On December 31, 2023, the Federal Housing Finance Agency (FHFA) made an announcement

regarding QCs. FHFA stated that Fannie Mae and Freddie Mac (the Enterprises) will each be allowed to invest up to \$1 billion (up from \$850 million) annually in the LIHTC market as equity investors. However, any investments greater than \$500 million in a given year must only support projects that waive the QC provision, ensuring the 30-year affordability period envisioned by the LIHTC program. Also, any of the investments greater than \$500 million must be in transactions that FHFA has identified as having difficulty attracting investors, thereby increasing the amount of investments that must support “Duty to Serve” rural areas, preserve affordable housing, support mix-income housing, provide supportive housing, or meet other affordable housing objectives.

On August 15, 2024 HUD’s Office of Multifamily Housing Programs announced a [proposal](https://www.hud.gov/sites/dfiles/Housing/documents/2024-N-6_Qualified_Contract_Loopole_Draft_%20HN_003.docx.pdf): https://www.hud.gov/sites/dfiles/Housing/documents/2024-N-6_Qualified_Contract_Loopole_Draft_%20HN_003.docx.pdf to restrict access to Federal Housing Authority (FHA) Multifamily rental and Risk Share insurance programs to project owners agreeing to waive any right to request a QC. Project owners would be required to demonstrate that they have unconditionally waived their right to obtain a QC withing their LIHTC allocation documents and affirmatively agree to maintain the project as affordable housing for the initial 30-year period. HUD sought feedback from the public using the [Multifamily Drafting Table](https://bit.ly/3S2EaMK): <https://bit.ly/3S2EaMK>. As of the date *Advocates’ Guide* went to press, a formal, final Housing Notice has not been issued.

RIGHT OF FIRST REFUSAL (ROFR) AND AGGREGATORS

Another feature related to year 15 is a serious problem. The LIHTC law has afforded mission-driven nonprofits a special privilege to secure at the outset of preparing a LIHTC application with investors, a right to obtain eventual ownership of the project at a minimum purchase

price after 15 years (called a transfer right). In recent years, some private firms have begun to systematically challenge nonprofits’ project transfer rights with the intent to eventually sell the property at market value. So-called “aggregators” acquire the initial investors’ interest in the property after the investors have obtained their 10-year tax savings benefits but before the rent restrictions expire at year 15. Aggregators are very large financial entities that take advantage of a legal ambiguity regarding the nonprofit’s “right of first refusal” (ROFR) to purchase the property by employing batteries of attorneys and other expensive maneuvers to overwhelm the mission-driven nonprofit. The Washington State Housing Finance Commission and others have been resisting the growing threat of aggregators in court (see [An Emerging Threat to Affordable Housing: Nonprofit Transfer Disputes in the Low-Income Housing Tax Credit Program](https://bit.ly/34eRWAM): <https://bit.ly/34eRWAM>).

The National Housing Trust (NHT) has additional ROFR information [here](https://bit.ly/4IJMq1O): <https://bit.ly/4IJMq1O> and [here](https://bit.ly/3S53UrO): <https://bit.ly/3S53UrO>.

The “Decent, Affordable, Safe Housing for All (DASH) Act,” introduced by Senator Ron Wyden (D-OR) proposes clarifying and strengthening the right of first refusal (ROFR) for nonprofit owners.

PLANNED FORECLOSURES

Another concern is with entities that appear to engage in strategic acquisition of LIHTC-funded properties after the LIHTC is allocated (and, in many instances, already claimed) with the hope of avoiding the LIHTC use restrictions. Advocates have identified “planned foreclosures,” actions by partners in LIHTC developments designed to result in a foreclosure and thus wipe out the affordable use restrictions. In such cases, the entity planning the foreclosure was not involved in the LIHTC application process and is not an entity that applies for LIHTCs. Instead, the entity buys into the development, loans itself money through distinct but related companies, and then

essentially forecloses on itself after claiming that property is unsuccessful. Unlike HFA-trusted partners that are sensitive to their standing with the HFA because they hope to secure LIHTCs in the future, planned foreclosure entities do not seek future LIHTC allocations. Because such firms operate outside of the QAP process, eligibility for future LIHTCs does not work as a disincentive to avoiding use restrictions.

Congress specifically gave the Treasury Secretary the authority to determine that such intentional transactions do not qualify as foreclosures that terminate the LIHTC affordable use requirements. Although the LIHTC program has been in existence for nearly 40 years, the IRS has provided no guidance to HFAs regarding how to deal with these situations. If ever passed, the “Affordable Housing Credit Improvement Act,” (AHCIA) would address planned foreclosures (see “Forecast for 2025” below).

COMPLYING WITH USE RESTRICTIONS AFTER YEAR 15

Although HFAs are tasked with monitoring compliance, additional guidance is needed to ensure that properties comply with regulations through the extended use period, the period after year 15 to at least year 30 (and for some states longer). During the initial 10-year credit period and the five-year recapture period, developments are less likely to have compliance issues because they are subject to losing tax credits. However, during the following extended use period, it is difficult to encourage compliance because there are few penalties for failing to do so. HFAs focus compliance monitoring and enforcement during the initial 15-year term. This is problematic given that a property is more likely to have compliance issues as it ages. IRS needs to develop guidance or new regulations to require an HFA to plan for how they will ensure compliance throughout the entire restricted use period.

Tips for Local Success

Because each state receives a new allocation of LIHTCs each year, QAPs are usually drafted annually. This gives advocates regularly scheduled opportunities to influence QAP priorities. LIHTCs are often in high demand among developers; therefore, developers propose projects that address the priorities set forth in the QAP to give themselves an advantage in the selection process.

Advocates should assess the QAP. If it only has a general statement of goals, advocates can work to get very specific set-asides or preference points for their priorities. If the QAP has too many priorities, this will render individual priorities less meaningful. Advocates should work to narrow the number of priorities or work to establish relative priorities so their priorities can compete more effectively.

If there are types of assisted housing that should be at the top of the priority list, advocates should work to ensure that they are positioned to better compete. For example, if there is a great need for units with more than two bedrooms, advocates might promote a QAP policy offering bonus points for projects providing units with two or more bedrooms for at least 10% of all low-income units. To facilitate rural projects, advocates might try to secure QAP policies that give points to projects with fewer than 50 units in rural areas.

Advocates can also argue for features that protect tenants, for example a QAP policy precluding tax credit assistance for projects that do not provide one-for-one replacement of units lost through redevelopment. Advocates should review the QAP to find out how long targeted units must serve lower-income people. If the QAP only requires the basic 15 years, plus the extended use period of another 15 years, advocates should try to get the compliance period lengthened as a threshold issue or try to get point preferences or set-asides for projects that voluntarily agree to a longer compliance period.

All states are required to have a public hearing about their proposed QAP before it is approved by the unit of government overseeing the HFA, but there are no specific requirements for the public hearing. Although not required, most states also provide for a public review and comment period for a proposed QAP.

Advocates should contact the HFA early to learn about its annual QAP process and build this into their work plan for the year. In addition, advocates should be sure to get on any notification list the HFA might have about the QAP and public hearings. Advocates should also develop relationships with the HFA's governing board and staff and communicate the advocate's priorities throughout the year. Not all communication has to take place in the context of the formal QAP process. Informal contacts can be used effectively to advance an advocate's priorities. In fact, the most effective means of advocating for any particular priority is to be in contact with the HFA long before a draft QAP is publicly released.

Once an HFA decides to award tax credits to a building, it must notify the chief executive officer of the local jurisdiction (such as the mayor or county executive) where the building is located. That official must have a reasonable opportunity to comment on the project. Advocates should ask the executive's office and any relevant housing department at the locality to notify them as soon as the HFA contacts the executive about a proposed project. Even better, advocates should seek a local policy requiring public notice and comment, along with public hearings, about a proposed project.

In December 2016, the IRS issued [Revenue Ruling 2016-29: https://www.novoco.com/sites/default/files/atoms/files/rr-16-29.pdf](https://www.novoco.com/sites/default/files/atoms/files/rr-16-29.pdf) holding that the IRS Code does not require or encourage state agencies allocating LIHTCs to reject proposals that do not obtain the approval of the locality where a project is proposed to be developed. IRS added that QAP policies requiring local officials to approve a proposed project

could have a discriminatory effect based on race and therefore be contrary to the "Fair Housing Act of 1968."

Before tax credits are allocated, there must be a comprehensive market study of the housing needs of low-income people in the area a project is to serve. The project developer must hire a third party approved by the HFA to conduct the market study.

If a building that does not fit the QAP's priorities is to receive tax credits, the HFA must provide a written explanation and make it available to the public.

Most states post a list of properties that have won tax credits after each round of competition. These lists can often be found on an HFA's website.

Funding

The LIHTC is a tax expenditure that does not require an appropriation. A December 12, 2024 report from the Joint Committee on Taxation estimates \$13.7 billion in foregone tax revenues ("tax expenditures") for 2025, growing to \$14.4 billion for 2026. For the period 2024 through 2028, the total foregone tax revenue is estimated to be \$72 billion. In addition, the Joint Committee estimates forgone taxes from the exclusion of interest on state and local government qualified private activity bonds for rental housing to be an additional \$1.5 billion for 2025, growing to \$1.6 billion for 2026. For the period 2024 through 2028, the total foregone tax revenue is estimated to be another \$8 billion.

Forecast for 2025

In 2025, Congress will be working on a large tax reform package. Key provisions included in the 2017 Tax Cuts and Jobs Act are set to expire at the end of 2025. As LIHTC is part of the tax code, this presents an opportunity to advocate for reforms within the tax package that will serve renters with the lowest incomes.

In the 119th Congress, Republicans will hold the majority in both the Senate and House of Representatives, so Congress will work to pass a tax package using the budget reconciliation process.

For potential reforms to LIHTC during tax reforms, Congress will start with provisions from the “[Affordable Housing Credit Improvement Act](https://bit.ly/4iQ2Pzj)”: <https://bit.ly/4iQ2Pzj> (AHCIA), which includes both expanding and reforming LIHTC. AHCIA was introduced by Senators Maria Cantwell (D-WA), Todd Young (R-IN), and Ron Wyden (D-OR), and Representatives Darin LaHood (R-IL), Suzan DelBene (D-WA), Brad Wenstrup (R-OH), Don Beyer (D-VA), Claudia Tenney (R-NY), and Jimmy Panetta (D-CA). Given the need for affordable rental homes for people with the lowest incomes, Congress should pair any expansion of the LIHTC with reforms to ensure that this resource can better serve households with the greatest needs. AHCIA has some key reforms promoted by NLIHC, but those reforms are often overshadowed by others’ desire to merely expand the LIHTC by 50% over two years without reforms. This could be the case for the 2025 tax package as well.

Expansion without key reforms will not ensure that LIHTC better serves extremely low-income households, including those experiencing or at risk of homelessness. NLIHC and National Alliance to End Homelessness are focused on [three key reforms in the AHCIA](https://bit.ly/3S3hdZJ): <https://bit.ly/3S3hdZJ>:

1. Provide a 50% basis boost for projects with at least 20% of the units set aside for households who have extremely low incomes. By providing a 50% basis boost, Congress can allow LIHTC to better serve extremely low-income tenants. This reform would also facilitate the development of more affordable housing for populations with special needs, such as formerly homeless individuals and people with disabilities. In addition to the AHCIA, this reform is also included in the “Decent, Affordable, Safe Housing for all (DASH) Act.”

2. Designate tribal areas as Difficult to Develop Areas (DDAs), as proposed in AHCIA, to make development automatically eligible for a 30% basis boost and therefore more financially feasible. Also, as proposed in AHCIA and DASH, require states to consider the needs of Native Americans when determining which developments will receive LIHTC each year.
3. Designate rural areas as DDAs, as proposed in AHCIA and DASH, making them automatically eligible for a 30% basis boost and therefore more financially feasible. The bill also would base the income limits in rural projects to the greater of area median income or the national nonmetropolitan median income, in recognition of the much lower incomes in rural areas.

In addition to these three reforms, NLIHC, National Alliance to End Homelessness, and National Housing Law Project support [reforms to LIHTC that provide strong tenant protections and ensure long term affordability](https://bit.ly/4ILWl6Y): <https://bit.ly/4ILWl6Y>:

- Support tenants’ right to organize
- Define “good cause” eviction standards
- Provide protections for tenants of expiring properties
- Provide opportunities for tenant/collective ownership
- Improve accessibility standards in LIHTC properties
- Require fair lease provision
- Eliminate the Qualified Contract (QC) loophole
- Clarify and strengthen nonprofits’ right of first refusal
- Increase the federal minimum nonprofit set-aside
- Extend the minimum affordability period
- Ensure data transparency and improve HUD’s LIHTC database.

In addition to expanding LIHTC by 50% over two years, the AHClA includes several other provisions that seek to make LIHTC more effective. These include:

- Lowering the 4%/Private Activity Bond threshold to 25% (from 50%).
- Prohibiting measures that local officials have used to resist locating projects in areas of opportunity. The bill would remove the provision requiring HFAs to notify the chief executive officer of the local jurisdiction in which a proposed building would be located. The bill would also specify that QAP selection criteria cannot include consideration of any support for or opposition to a project from local elected officials, or of local government contributions to a development.
- Better aligning the LIHTC program with the “Violence Against Women Act” (VAWA) by requiring all long-term use agreements to include VAWA protections. The bill would also clarify that an owner should treat a tenant who has their lease bifurcated due to violence covered by VAWA as an existing tenant who should not have to recertify their income eligibility as if they were a new tenant.
- Ensuring that affordability restrictions endure in the case of illegitimate foreclosures (“planned foreclosures”) by providing HFAs, rather than the Treasury Department, the authority to determine whether the foreclosure was an arrangement simply to revoke the affordability restrictions. The bill would also require owners to provide HFAs with at least 60 days’ written notice of intent to terminate the affordability period, giving the HFA more time to assess the legitimacy of the foreclosure.
- Allowing existing tenants to be considered low income if their income increases, up to 120% AMI.
- Replacing the current LIHTC student rule to better align with HUD’s student rule, by ensuring that households composed entirely of adult students under the age of 24 who are enrolled full-time at institutions of higher learning are ineligible to live in a LIHTC apartment. Exceptions exist for single parents, formerly homeless youth, those aging out of foster care, victims of domestic violence and human trafficking, and veterans.
- Allowing tenant relocation costs incurred in connection with rehabilitation to be capitalized as part of the cost of rehab.
- Clarifying that HFAs have the authority to determine what constitutes a “concerted community revitalization plan.”
- Limiting the rent charged to the maximum LIHTC rent instead of the Fair Market Rent (FMR) for units leased to households with a voucher if the unit is also benefiting from income averaging or the extremely low-income basis boost. The voucher payment standard based on the FMR can be much higher than the LIHTC maximum rent. Using the FMR in such instances subsidizes the property, providing excess rental assistance that could otherwise be used by public housing agencies (PHAs) to provide vouchers to other families.
- Allowing income averaging for 4% projects with Private Activity Bonds.
- Clarifying that LIHTC can be used to develop properties specifically for veterans and other special populations.
- Removing the QCT population cap.
- Increasing the DDA population cap to 30% to enable properties in more areas to benefit from the 30% basis boost.
- Requiring HFAs to consider cost reasonableness as part of the QAP selection criteria.
- Allowing HFAs to provide a basis boost of 30% for Housing Bond-financed properties.

For More Information

NLIHC, 202-662-1530, www.nlihc.org.

NLIHC LIHTC Reform handouts:

- “Critically Needed Reforms to the Low-Income Housing Tax Credit” <https://bit.ly/3S3hdZJ>.
- “Reforming the low-income Housing tax credit: A greater focus on households with the lowest incomes” https://nlihc.org/sites/default/files/2024-11/Low_Income_Housing_Tax_Credit_Fact_Sheet2_11_24.pdf.

NLIHC has four reports:

- *Picture of Preservation 2024*, <https://tinyurl.com/59vxxv6u>.
- *The Role of Vouchers in the Low-Income Housing Tax Credit Program*, <https://www.huduser.gov/portal/periodicals/cityscape/vol26num2/article11.html>.
- *Balancing Priorities: Preservation and Neighborhood Opportunity in the Low-Income Housing Tax Credit Program Beyond Year 30*, <https://nlihc.org/research/balancing-priorities>.
- *Improving Low-Income Housing Tax Credit Data for Preservation*, <https://nlihc.org/resource/improving-low-income-housing-tax-credit-data-preservation-new-report-nlihc-and-pahrc>.

National Housing Law Project, <https://www.nhlp.org/resource-center/low-income-housing-tax-credits>, including, *An Advocate’s Guide to Tenants’ Rights in the Low-Income Housing Tax Credit Program*, <https://www.nhlp.org/wp-content/uploads/LIHTC-2021.pdf>.

Affordable Rental Housing ACTION Campaign, <http://rentalhousingaction.org>, including its “Detailed Bill Summary: *The Affordable Housing Credit Improvement Act*”: <https://bit.ly/3YPqIQ7>

HUD PD&R’s database of LIHTC projects, updated through 2022, <https://bit.ly/3EDoegP>.

HUD PD&R’S list of QCTs and DDAs, <https://www.huduser.gov/portal/datasets/qct.html>.

HUD PD&R’s Tenant Data, <https://www.huduser.gov/portal/datasets/lihtc/tenant.html>.

HUD’s lists of HFAs, https://lihtc.huduser.gov/agency_list.htm.

The National Council of State Housing Agencies (NCSHA) has:

- Recommended practices for administering the LIHTC program, <https://www.ncsha.org/resource-center/housing-credit-recommended-practices>.
- A list of state HFAs, <https://www.ncsha.org/housing-help>.
- A list of state income averaging policies (from 2018), <https://www.ncsha.org/resource/state-income-averaging-policies>.
- LIHTC Reference Guide webpage <https://www.ncsha.org/resource/housing-credit-reference-guide> has a wealth of information, including the IRS Code, regulations, IRS Revenue Rulings, IRS Revenue Procedures, and IRS Notices

Novogradac, a consulting firm has on its [Affordable Housing Resource Center](#), a wealth of LIHTC information, including:

- A list of HFAs in all states, <https://tinyurl.com/mryc3d7p>.
- Links to state QAPs, <https://tinyurl.com/yx7kvn6v>.
- A list of state income averaging policies, <https://tinyurl.com/njx9j8zb>.
- The IRS Code, regulations, IRS Revenue Rulings, IRS Revenue Procedures, and IRS Notices, <https://www.novoco.com/lihtc-irs-guidance>.