

Hot Topics in LIHTC Advocacy

Hannah Adams, Southeast Louisiana Legal Services

Kara Brodfuehrer, National Housing Law Project

Dina Schlossberg, Regional Housing Legal Services

Steve Sharpe, Legal Aid Society of Southwest Ohio

Ashley Werner, Leadership Counsel for Justice and
Accountability

Introduction

- We'd love your feedback and participation.
- We also greatly encourage you to join our LIHTC HJN Working Group
- We've held them at 4 p.m. Eastern/3 p.m. Central/2 p.m. Mountain/1 p.m. Pacific every other month on the fourth Thursday.
- May 23, 2019 is the next scheduled call.

Agenda

- Tracking and Identifying Expiring Contracts
- State-based Advocacy on LIHTC Siting and Qualified Allocation Plans
- Income Averaging
- Litigation Updates
- Open Discussion

Expiring Tax Credit Subsidies in New Orleans



Step 1: Public Records Request



SOUTHEAST LOUISIANA
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Free Legal Aid for Low-Income People

Baton Rouge • Covington • Hammond • Harvey • Houma • New Orleans

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April 5, 2017

Louisiana Housing Corporation
Attn: Legal Department
2415 Quail Drive
Baton Rouge, Louisiana 70808

By Fax

Re: Public Records Law Request

To Whom It May Concern:

Pursuant to R.S. LSA-R.S. 44:1 *et seq.* I am requesting the following public records related to the Louisiana Housing Corporation's (LHC) award of Low Income Housing Tax Credits (LIHTC) since 1990.

We are seeking the following documents:

1. Records reflecting any and all developments funded since 1990 that agreed to an extended affordability period.
2. For any development identified in response to Request 1, please provide any and all records reflecting the length of the extended affordability period.
3. For any development identified in response to Request 1, records reflecting whether the development agreed to waive their rights to a Qualified Contract.

With respect to these requests, we are not seeking the names or individual financial information, such as individual Social Security Numbers, dates of birth, tax returns, personal income and credit scores, for any homeowners or borrowers.

We make this request as attorneys at Southeast Louisiana Legal Services, which is a non-



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April 3, 2017

Louisiana Housing Corporation
Attn: Legal Department
2415 Quail Drive
Baton Rouge, Louisiana 70808

By Fax

Re: Public Records Law Request

To Whom It May Concern:

Pursuant to R.S. LSA-R.S. 44:1 *et seq.* I am requesting the following public records related to the Louisiana Housing Corporation's (LHC) decisions to release developments funded by the Low Income Housing Tax Credit (LIHTC) program since 1986 from their mandatory low income use restrictive covenants.

In this request, we are not seeking records related to releases of restrictive covenants for lease purchase developments.

We are seeking the following documents:

1. Records reflecting any development funded since 1986 through LIHTC that LHC has released from its low income use restrictive covenant prior to the expiration of the extended use period.
2. For any development identified in response to Request 1, please provide any and all records reflecting LHC's deliberation and decision to release the low income use restrictive covenant.
3. Records reflecting any development funded since 1986 through LIHTC that has been released from its low income use restrictive covenant as a result of foreclosure.
4. Records reflecting any and all requests to LHC from developments funded since 1986 for a release of the low income use restrictive covenant in which LHC rejected the request.



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5. For any development identified in response to request 4, any and all records reflecting LHC's deliberation and decision to reject the release request.
6. Records regarding LIHTC developments for which LHC was unable to present a qualified contract for the acquisition of the low-income portion of the building by any person who will continue to operate such portion as a qualified low-income building, pursuant to 26 U.S.C. § 42(h)(6)(E)(i)(II).
7. Records reflecting discussion by the LHC Board about requests for release of a development's low income use restrictive covenant, including, but not limited to any agenda items, LHC Board resolutions, reports, or other records that address the release of low income use restrictive covenants.

With respect to these requests, we are not seeking the names or individual financial information, such as individual Social Security Numbers, dates of birth, tax returns, personal income and credit scores, for any homeowners or borrowers.

We make this request as attorneys at Southeast Louisiana Legal Services, which is a non-profit legal aid law firm that serves the public interest for low-income Louisiana residents. As such, we respectfully request a waiver of all fees associated with this request because we do not seek this request for pecuniary gain or commercial purposes.

Thank you for your attention to this matter. Please let me know if you have any questions.

Sincerely,

Chelsea P. Fitzgerald, Esq.
(504) 529-1000 ext. 276
cfitzgerald@slls.org



Louisiana Housing Corporation
Asset Management Portfolio
LIHTC Properties - Orleans Parish

Project Name	LIHTC Project ID#	PIS Date	# Units	Parish	Compliance Period		Extended Use Period		Extended Affordability (Owner Elected Conditions Per Selection Criteria)
1 1501 Canal Apartments (Marais-Texaco Apts)	2010-04BF	5/21/2014	112	Orleans	01/01/ 14	12/31/ 28	01/01/ 14	12/31/ 43	Owner irrevocably foregoes right to submit QC until after the 35th year.
2 2101 Louisiana Apartments (Williams Building)	1112-87	10/24/2013	42	Orleans	01/01/ 13	12/31/ 27	01/01/ 13	12/31/ 42	Owner irrevocably foregoes right to submit QC until after the 35th year.
3 2222 Tulane Apartments	09(PC)-53	4/12/2012	60	Orleans	01/01/ 13	12/31/ 27	01/01/ 13	12/31/ 42	Owner irrevocably foregoes right to submit QC until after the 35th year.
4 3501 St. Claude	07(GO)-10(R)	12/23/2008	37	Orleans	01/01/ 09	12/31/ 23	01/01/ 09	12/31/ 38	Owner irrevocably foregoes right to submit QC until after the 35th year.
5 Abundance Square	01-10	10/23/2003	73	Orleans	01/01/ 04	12/31/ 18	01/01/ 04	12/31/ 33	Owner irrevocably foregoes right to submit QC until after the 35th year.
6 Annunciation Inn	06(2)-155	11/19/2008	106	Orleans	01/01/ 08	12/31/ 22	01/01/ 08	12/31/ 37	Owner irrevocably foregoes right to submit QC until after the 35th year.
7 Arbor Place - MI	08-03BF	3/13/2009	136	Orleans	01/01/ 10	12/31/ 24	01/01/ 10	12/31/ 39	Owner irrevocably foregoes right to submit QC until after the 30th year.
8 BW Cooper I/Marrero Common - MI	07/08(FA)-24	12/20/2011	250	Orleans	01/01/ 12	12/31/ 26	01/01/ 12	12/31/ 41	N/A
9 BW Cooper IB - MI	2011-02BF	1/8/2014	160	Orleans	01/01/ 14	12/31/ 28	01/01/ 14	12/31/ 43	Owner irrevocably foregoes right to submit QC until after the 30th year.
10 Bywater Arts Loft	06(2)-303	11/12/2008	37	Orleans	01/01/ 09	12/31/ 23	01/01/ 09	12/31/ 38	N/A
11 Bywater Lofts II - MI	2010-71	12/9/2011	30	Orleans	01/01/ 12	12/31/ 26	01/01/ 12	12/31/ 41	Owner irrevocably foregoes right to submit QC until after the 35th year.
12 Cabbage Alley	96-29	5/31/1997	56	Orleans	01/01/ 98	12/31/ 12	01/01/ 98	12/31/ 27	Project will continue low income restrictions for 30 years or more.
13 Canal Street SRO	02-75	10/1/2002	70	Orleans	01/01/ 02	12/31/ 16	01/01/ 02	12/31/ 31	N/A
14 CCNO Venture I Laurel Glen	06(2)-188	6/17/2008	56	Orleans	01/01/ 08	12/31/ 22	01/01/ 08	12/31/ 37	Owner irrevocably foregoes right to submit QC until after the 35th year.
15 CCNO Venture II (Laurel Terrace)	07/08(FA)-27	7/18/2008	56	Orleans	01/01/ 09	12/31/ 23	01/01/ 09	12/31/ 38	Owner irrevocably foregoes right to submit QC until after the 35th year.
16 CGH (Crescent Garden Homes) New Orleans	09-10BF	6/3/2010	35	Orleans	01/01/ 11	12/31/ 25	01/01/ 11	12/31/ 40	N/A
17 Chateau Carre (Elysian Courtyards) - MI	08(GO)-46	9/13/2010	150	Orleans	01/01/ 10	12/31/ 24	01/01/ 10	12/31/ 39	Owner irrevocably foregoes right to submit QC until after the 35th year.
18 CJ Peete III (Harmony Oaks) - MI	07/08(FA)-25	1/1/2010	460	Orleans	01/01/ 10	12/31/ 24	01/01/ 10	12/31/ 36	Owner irrevocably foregoes right to submit QC until after the 35th year.
19 Claiborne Lofts	1112-32	8/15/2014	26	Orleans	01/01/ 14	12/31/ 28	01/01/ 14	12/31/ 43	Owner irrevocably foregoes right to submit QC until after the 35th year.

Step 2: HUD LIHTC Database

The screenshot shows a web browser window with the URL <https://lihtc.huduser.gov>. The page title is "LIHTC Database Access".

Select the variables you want to extract from the database.
You do not need to select here the variables you will use to refine your selection of projects.

Project Identification

- HUD ID Number
- Project Name and Address
 - Include Multiple Address Information
- State ID
- Project Contact Information

Geocoding Information

- Latitude and Longitude
- Metropolitan Area Code
- 2000 Complete Census Tract Code
- 2000 State FIPS Code
- 2000 County FIPS Code
- 2000 Census Tract Number
- 2000 Census Place Code

Select a single State or multiple States.
If you want to make a nationwide query, select "All States" under "Select Multiple States." If you want a complete list of projects for the entire U.S., click [here](#) to download a ZIP archive of the entire LIHTC Database in dBase format.

Select a Single State to Select Cities or Counties within the State

Select Single State ▾

- All States
- Alabama
- Alaska
- Arizona
- Arkansas

Or, Select Multiple States

LIHTC Database Access

This system allows selective access to data from HUD's Low-Income Housing Tax Credit Database. Data output is in either easy-to-read HTML tables, or a comma-delimited text file suitable for further analysis with spreadsheet, database, or statistical software. **Data are now available for projects placed in service through 2016.**

If you are looking for affordable housing in which to live this site may be used to locate rental housing supported by the LIHTC and having the applicable program rent and income restrictions. You may also benefit from the assistance of a HUD-approved Housing Counseling Agency. A list of HUD-approved Housing Counseling Agencies is available from <http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm> or by calling toll-free 1-888-995-HOPE (4673).

Income limit information for LIHTC projects is available at <http://www.huduser.org/datasets/il.html>. Information on how to compute LIHTC maximum rents from HUD's Very Low Income Limits is available at <https://www.huduser.gov/portal/datasets/il/il16/FAQs-16.pdf> (see question 12 on page 5).

To extract LIHTC project information, begin by selecting the variables you want extracted in the upper left frame. Then, select either a single State (if you want to narrow your search to a particular city or group of cities), or multiple States in the lower right. Finally, narrow your search criteria, choose an output format, and extract your data.

Click [here](#) to download the complete LIHTC Database file in dBase format as a ZIP archive.

[HUD User Home](#) | [HUD User Data Sets](#) | [LIHTC Data Set Home](#) |

Problems or questions? Contact Michael.K.Hollar@hud.gov.

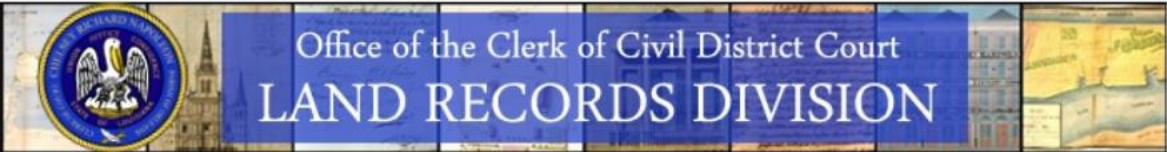
The Windows taskbar at the bottom shows the time as 10:31 AM on 2/20/2019.

Step 3: Public Records Research

Search Real Estate Index: Selectio x +

Not secure | onlinerecords.orleanscivilclerk.com/RealEstate/SearchEntry.aspx

Apps sheryl wagers VA.gov United States v. Lease RD Web Access Inbox (5,950) - hadan derek Hamp's Constr., LLC



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Session ID: 1642923 Time Connected: 00:54 [Logout](#) | [My Account](#) | [View Basket](#)

Welcome **Real Estate** FAQ Certificate Request Forms

Real Estate Document Access

Permanent Index From 02/18/2014 to 02/19/2019 [Click here for Search Instructions](#)
Temporary Index from 02/20/2019 to 02/20/2019
Images from 01/01/2005

Press 'ESC' to cancel a Search

Basic **Advanced**

Conveyance Documents Only Mortgage Documents Only Other Documents Only

Name Search Type: Begins With Contains Exact Match Sounds Like

Name:

Name Type: All Vendor Vendee Mortgageor Mortgagee Grantor Grantee

Combined with:

Additional Name:

Additional Name Type: All Vendor Vendee Mortgageor Mortgagee Grantor Grantee

Date Filed From: To:

Instrument # From: To:

MIN # From: To:

CIN # From: To:

	Renaissance Place Limited Partnership
	5505 Interstate North Parkway Atlanta, GA 30328
Tax Identification	20-5480604
Buildings	3
	307
Contact	Paul J. Ponte
	770.952.2233 (General) 770.956.9057 (Fax)

Part II QUALIFICATIONS

A. Tax Credit Allocation ¹	\$2,576,528.00
B. Eligible Basis ²	\$34,071,534.00
C. Unit Fraction	1
D. Floor Space Fraction ²	1
E. Applicable Fraction ²	1
F. Qualified Basis ²	\$33,863,845.02
G. Low Income Portion	100%
H. Set Aside Percentage ²	15% of Residents @ 40% AMI or less
I. Income Percentage ²	40% AMI
J. Place In Service Date ³	01-Aug-08
K. Credit Period ³ January 1, 2008 through December 31, 2017	
L. Base Calendar Year ³	2008
M. Compliance Period ³ January 1, 2008 through December 31, 2022	
N. Extended Use Period ³ January 1, 2008 through December 31, 2037	
O. Qualified Compliance Period ³ January 1, 2008 through December 31, 2037	

¹ Information Provided by Agency

² Information Contained in Application

³ Information Provided by Owner

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	Renaissance Place Limited Partnership
	5505 Interstate North Parkway Atlanta, GA 30328
Tax Identification	20-5480604
Buildings	3
	307
Owner	Paul J. Ponte
	770.952.2233 (General) 770.956.9057 (Fax)

Part III QUALIFICATIONS

A. Tax Credit Allocation ¹	\$2,576,528.00
B. Eligible Basis ²	\$34,071,534.00
C. Unit Fraction	1
D. Floor Space Fraction ²	1
E. Applicable Fraction ²	1
F. Qualified Basis ²	\$33,863,845.02
G. Low Income Portion	100%
H. Set Aside Percentage ²	15% of Residents @ 40% AMI or less
I. Income Percentage ²	40% AMI
J. Place In Service Date ³	01-Aug-08
K. Credit Period ³ January 1, 2008 through December 31, 2017	
L. Base Calendar Year ³	2008
M. Compliance Period ³ January 1, 2008 through December 31, 2022	
N. Extended Use Period ³ January 1, 2008 through December 31, 2037	
O. Qualified Compliance Period ³ January 1, 2008 through December 31, 2037	

¹ Information Provided by Agency

² Information Contained in Application

³ Information Provided by Owner

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Click checkbox to select page(s) for printing.

- 19 of 36
- 20 of 36
- 21 of 36
- 22 of 36
- 23 of 36

Handelman Lofts, #06(R)-473

M. Compliance Period³ January 1, 2006 through December 31, 2020

N. Extended Use Period³ January 1, 2006 through December 31, 2035

O. Qualified Compliance Period³ January 1, 2006 through December 31, 2035

¹ Information Provided by Agency

² Information Contained in Application

³ Information Provided by Owner

Owner Elected Conditions Per Selection Criteria

1. Local Non-Profit Support
2. 100 % (24) of units serve Special Needs households other than elderly, and provides supportive services for (i) Single Parent Households. (**Attachment I & III**)
3. Project contains more than 15% Handicapped Equipped Units in excess of Section 504 of Rehab Act of 1973. (**Attachment II**)
4. Project Provides Amenities (**Attachment III**)
5. Project Provides Community Facilities (**Attachment III**)
6. **Owner irrevocably foregoes right to request Agency to find person to acquire Owner's interest in low-income portion of Project and to submit Qualified Purchase Contract until after the 35th year.**
7. Developer submitted an executed Referral Agreement with Local PHA.
8. Project incorporates Energy Efficient products, 15-year maintenance free exterior, and 30 year roof warranty. (**Attachment IV**)

M = 15 year period beginning with 1st calendar year of credit period

N = 30 year period beginning with 1st calendar year of credit period

O = greater of M or whatever specified in application

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Document Summary

Instrument Number: 2007-17407
Party Name: ***
Assoc. Name: ***
Legal Description: ***

Step 4: Cross reference other subsidies

- ACC (public housing) contract Section 8 Project-Based Rental Assistance (PBRA) contract
- Project-Based voucher contract
- CDBG “piggyback” funding
- ... and more

Step 5: Identify vulnerable properties

NEW ORLEANS LIHTC PROPERTIES POTENTIALLY VULNERABLE FROM 2020-2030 -- **DRAFT** -- NOT FOR REPRODUCTION

NAME OF PROPERTY	ADDRESS	COMPLIANCE PERIOD EXP	QUALIFIED COMPLIANCE EXP	ELECTION TO IRREVOCABLY FORGO	EXT. USE PERIOD EXP	# OF LOW INCOME UNITS	INSTRUMENT #
PALMETTO APT HOMES	3980 CAMBRONNE ST	12/31/2020	2035	no	12/31/2035	8 (see notes)	2008-51639
FISCHER I	1900 HENDEE ST	12/31/2020	2021	no	12/31/2035	12 (straight LIHTC)	2007-65851
FISCHER III	Various Addresses	12/31/2021	2037	no	12/31/1936	36 (straight LIHTC)	2010-30038
200 CARONDELET	200 CARONDELET ST	12/31/2023	2023	no	12/31/2038	75.6	2009-28184
BYWATER ART LOFTS	3725 DAUPHINE ST	12/31/2023	2038	no	12/31/1938	36	2009-24680
NINE27 APTS	927 POEYFARRE ST	12/31/2023	2038	no	12/31/1938	16	2010-05107
LGD Rental II	Various addresses	12/31/2023	2038	no	12/31/1938	124	2010-30870
CONSTANCE LOFTS	1041, 1053 Constance St.	12/31/2024	2024	no	12/31/1939	23	2011-41027
ST JOE LOFTS	401 ST JOSEPH ST	12/31/2025	2040	no	12/31/2040	27	2012-35965
CGH NEW ORLEANS	Various addresses	12/31/2025	2025	no	12/31/2040	35	2013-23432
RENEWAL HOMES III	8821 WILLOW ST	12/31/2026	2041	maybe? Can't read photocopy	12/31/2041	15	2012-24788
CRESCENT GARDEN HOMES	Various addresses	12/31/2026	2046	no	12/31/1941	141	2014-39617
ROMAN BIENVILLE HOMES	Various addresses (219 N.	12/31/2029	2029	no	12/31/1944	31	2015-28162
THE MUSES II	1731 POLYMNIA ST	12/31/2025	2040	no	12/31/2040	13	2012-31759

QAP Advocacy – Ohio Example

- Starting in late 2014/early 2015, all Ohio legal aid programs have dedicated staff resources to improving the allocations under the Qualified Allocation Plan (QAP).
- We have been joined by the Ohio fair housing organizations, and we have consistently advocated with OHFA on a few basic points.
 - We have not tried to comment on each and every aspect of the QAP.

Ohio Example

- End the over-concentration of developments in racially and ethnically concentrated areas of poverty and require development in areas without significant low income housing.
- Rectify the imbalance that currently favors senior housing over family housing for new construction.
- Ensure family developments have enough bedrooms to truly serve families with children.
- Continue to support preservation of low-income housing and permanent supportive housing.

Experts

- For advanced analysis on allocations, an expert report is critical.
- In Ohio, we have hired Abt Associates who did some amazing data analysis, created maps, and is finishing up a full report.

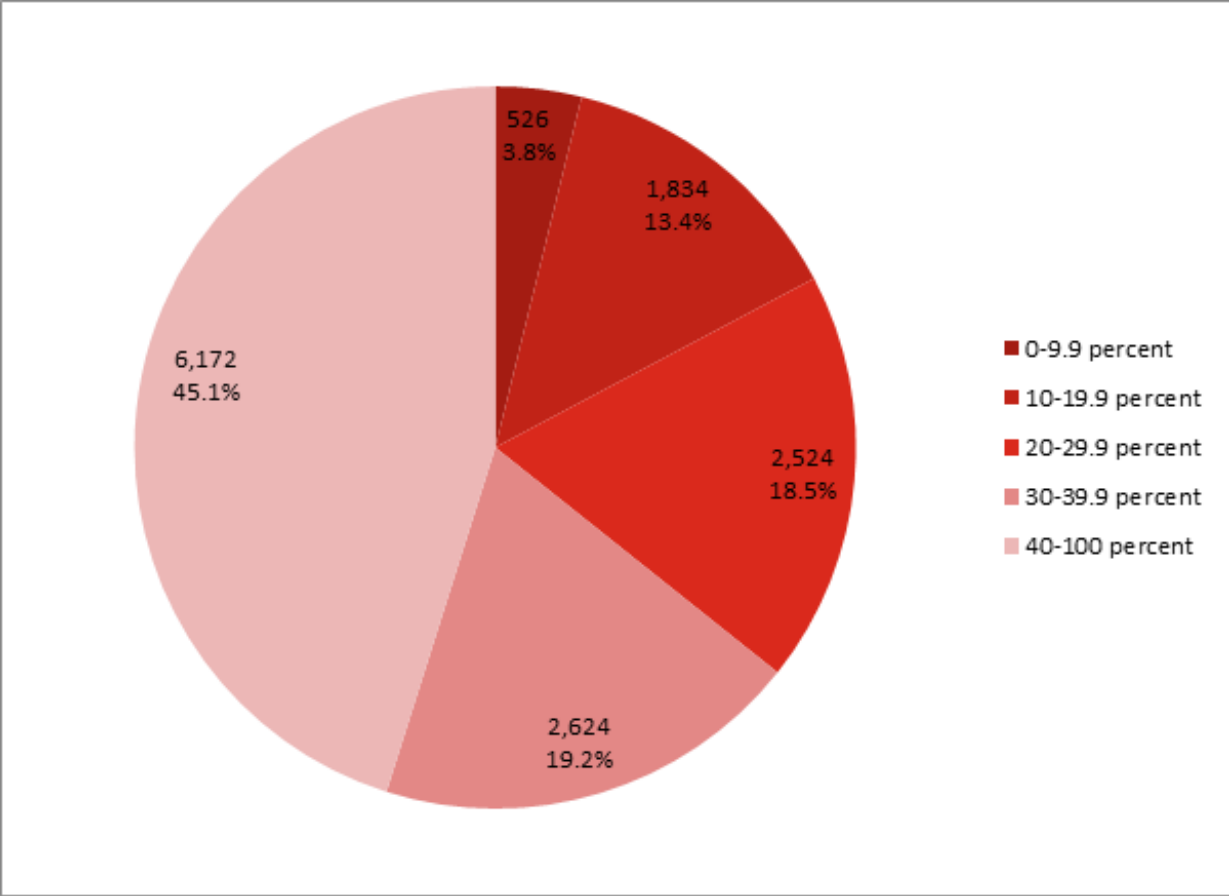
LIHTC Awards for OHFA Family Properties in Metropolitan Areas, 2006-2015 Percent of Units by Census Tract Percent Black or African American and Poverty Rate

Census Tract Poverty Rate					
Census Tract Percent Black or African American	0-9.9 percent	10-19.9 percent	20-29.9 percent	30-39.9 percent	40-100 percent
0-12.4 percent	3.8	9.0	9.9	1.6	1.6
12.5-24.9 percent	-	1.9	1.6	-	2.5
25-49.9 percent	-	1.7	3.7	4.6	9.5
50-74.9 percent	-	0.9	0.3	4.4	8.8
75-100 percent	-	-	3.0	8.6	22.8

Source: Abt Associates, Inc.

Notes: Census tract poverty rates and percent black or African American were calculated from American Community Survey 2010-2014 5-year estimates. Census tract percent black or African American includes population identified as Black or African American alone. Properties were identified as a family property based on the OHFA target population. The calculations showing numbers of units include all units in each property

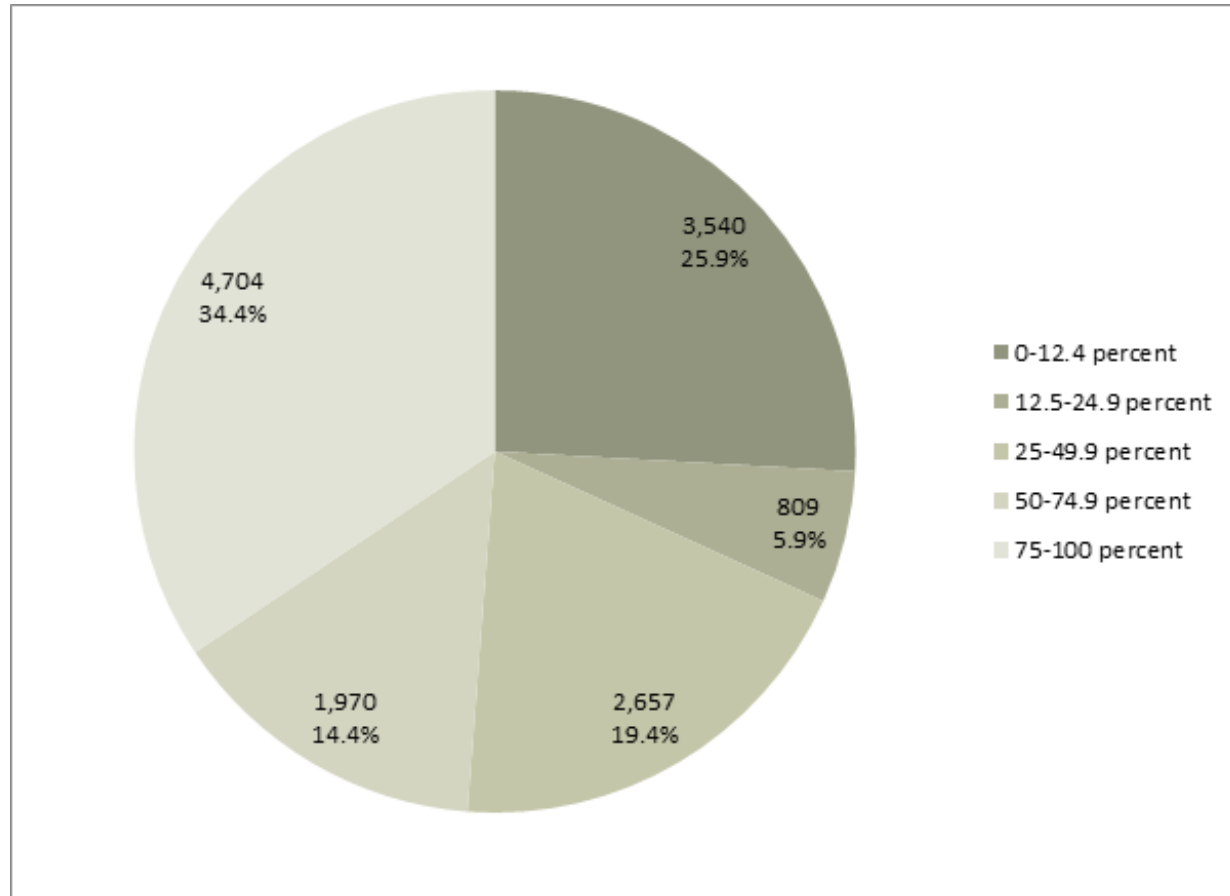
LIHTC Awards for Units in Family Properties in Metropolitan Areas, 2006-2015 by Census Tract Poverty Rate



Source: Abt Associates

Notes: Census tract poverty rates were calculated from American Community Survey 2010-2014 5-year estimates. Properties were identified as a family property based on the OHFA target population. Family properties awarded tax credits in metropolitan areas included 13,680 units. The calculations showing numbers of units include all units in each property.

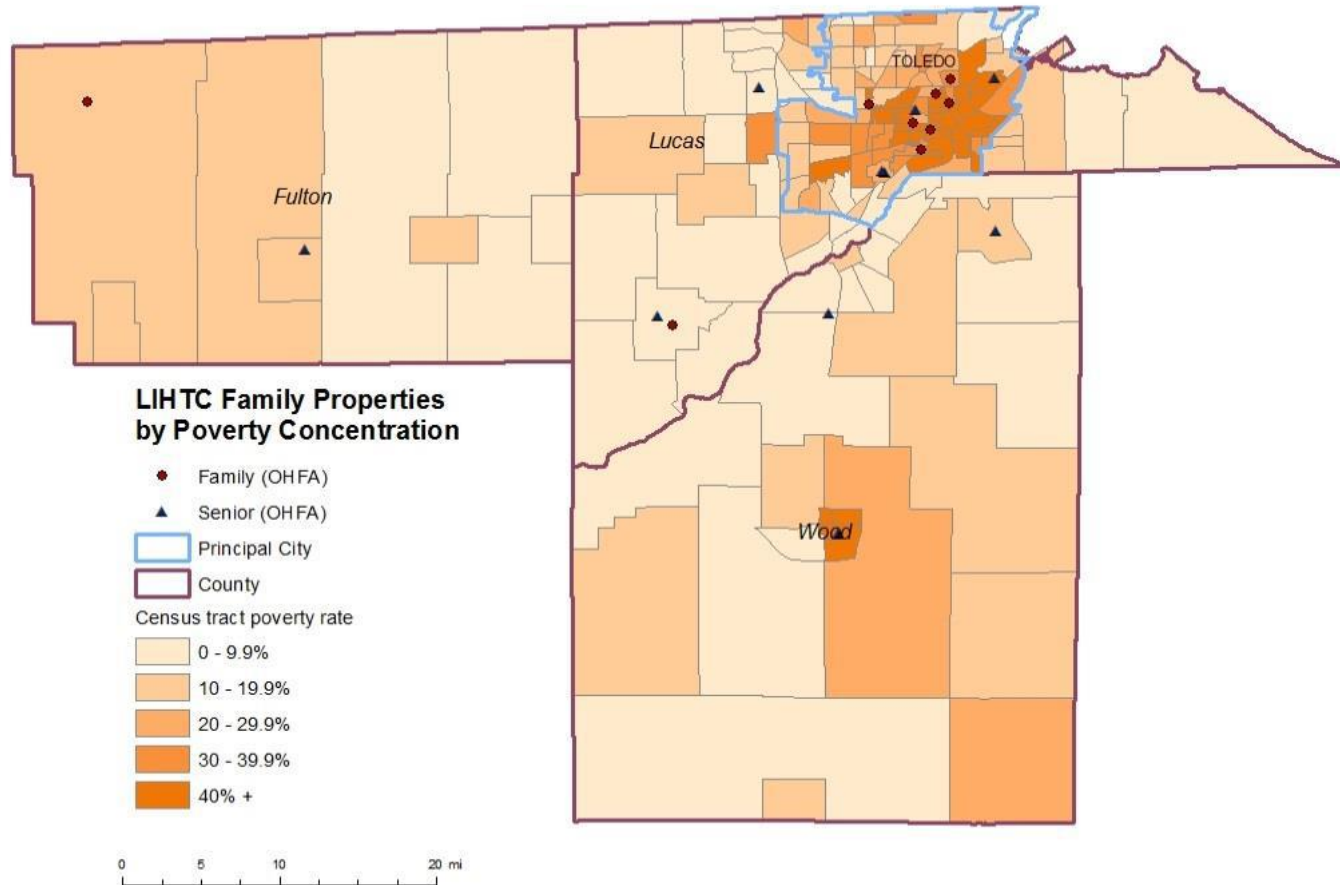
LIHTC Awards for Units in Family Properties in Metropolitan Areas, 2006-2015 by Census Tract Percent Black or African American



Source: Abt Associates

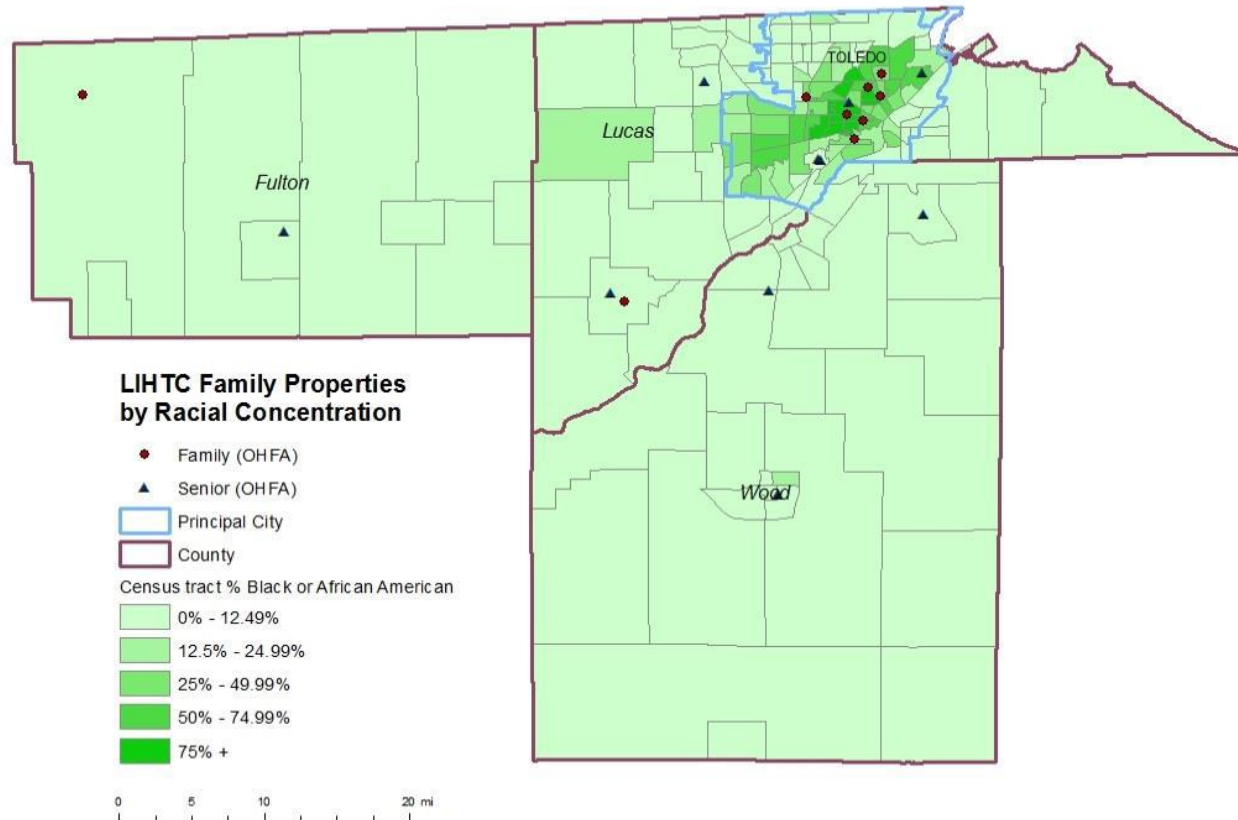
Notes: Census tract percent black or African American was calculated from American Community Survey 2010-2014 5-year estimates and includes population identified as Black or African American alone. Properties were identified as a family property based on the OHFA target population. Family properties awarded tax credits in metropolitan areas included 13,680 units. The calculations showing numbers of units include all units in each property.

Locations of LIHTC Family Properties in the Toledo MSA



Notes: Census tract poverty rates were calculated from American Community Survey 2010-2014 5-year estimates. Census tract percent black or African American was calculated from American Community Survey 2010-2014 5-year estimates and includes population identified as Black or African American alone. A property was classified as a family property if at least 50 percent of its units had two or more bedrooms. Family (OHFA) properties were identified as a family development based on the OHFA target population. Senior (OHFA) properties were identified as a senior development based on the OHFA target population.

Locations of LIHTC Family Properties in the Toledo MSA



Notes: Census tract poverty rates were calculated from American Community Survey 2010-2014 5-year estimates. Census tract percent black or African American was calculated from American Community Survey 2010-2014 5-year estimates and includes population identified as Black or African American alone. A property was classified as a family property if at least 50 percent of its units had two or more bedrooms. Family (OHFA) properties were identified as a family development based on the OHFA target population. Senior (OHFA) properties were identified as a senior development based on the OHFA target population.

Ohio Advocacy - QAP

- The 2016 Abt Associates report is in the materials and it outlines issues with Ohio allocations
- We then commissioned a follow up report from Abt Associates that was released in November of 2018 to check the progress in QAP allocations.

CTAC Opportunity Maps: *Towards Equitable & Accurate Representation of Rural California*

- Opportunity Map Development Evolution
 - Initial Research & Fair Housing Task Force Establishment
 - 2017 Drafts, stakeholder input, & 2018 Regulations
 - Rural Smart Growth Task Force & Statewide Housing Organization Advocacy
 - Rural Working Group created
 - 2018 draft revisions & 2019 Regulations

Addressing Urban Bias in Opportunity Maps

- Process
- Geographic Level of Comparison
- Data Scale – Census Tracts, Topographical Limitations
- Indicators
 - Proximity to Jobs, Commute Times
 - Poverty Rates & Racial Segregation
- Tie Breaker
- Capturing gentrification & displacement

Contextualizing Opportunity Maps in CA Fair Housing & Rural Policy Development

- Need to place & integrate OM process within broader policy & advocacy context
 - Incorporating rural communities into CA smart growth vision, policies, & funding sources
 - Implementing AB 686 AFFH duty & new fair housing regulations

What is Income Averaging?

- The Consolidated Appropriations Act of 2018 created a new minimum set aside election for new Low Income Housing Tax Credit (“LIHTC”) projects.
- Income Averaging allows LIHTC owners to elect to serve households with incomes of up to **80%** of area median income (AMI) and have these household qualify as LIHTC units, so long as the average income/rent limit in the project remains at 60% or less of AMI.
- Owners who elect Income Averaging must also commit to at least 40% of the units in the project have an average income level of no more than 60% of AMI and the rents for these units must be equal to 30% of the qualifying income level.

Other LIHTC Set- Aside

- Prior to this new change in the law, low income housing tax credits units were restricted to households earning no more than 60% of the AMI.
- Income averaging is a new Project “Set Aside”
- The other two existing minimum set-asides call for having:
 - 1) 20% of the units targeted to households with no more than 50% of the AMI; or
 - 2) 40% of the units at no more than 60% of the AMI.
- These two set aside options remain as an option for a Project. Applicants must elect a set aside as part of the application for LIHTC.

Stated Goals of Income Averaging

- Viewed as a way to expand the program to serve more families. For example, before Income Averaging, families earning 80% of the AMI did not qualify for a LIHTC home and were likely living in market-rate housing, where they were spending a large portion of their incomes on rent.
- Help make more properties financially feasible and allow for deeper income targeting. Under this new Set Aside, the theory is higher rents that households at the upper range will pay will have the potential to offset the lower rents for extremely low- and very low-income households.
- For preservation of federally assisted building (ex. HUD 202 or 236) with LIHTC existing households with incomes over 60% AMI and up to 80% AMI will not be displaced through the conversion process.
- Align LIHTC income limitations to be consistent with long-standing federal affordable housing policies that define “Low- Income” as households with incomes at or below 80% of AMI.

How Does Income Averaging Work?

- Income averaging applies to the designated income/rent levels of the units, not the incomes of individual tenant households.
- Under income averaging, unit designations may only be set at 10% increments beginning at 20% of the AMI; thus, the allowable income/rent designation levels are 20%, 30%, 40%, 50%, 60%, 70%, and 80% of the AMI.
- Remember; If an Owner elects this Income Averaging Set Aside, the average income/rent limit in the project must remain at 60% or less of AMI.

Implementation of Income Averaging

- The IRS has not issued any guidance on Income Averaging. Each state tax credit allocating agency is making a determination on how and whether to implement Income Averaging.
- Novogradac Affordable Housing Resource Center –chart on state by state policy and implementation of Income Averaging

<https://www.novoco.com/resource-centers/affordable-housing-tax-credits/application-allocation/state-income-averaging-policies>

- Ex. - Pennsylvania Housing Finance Agency QAP on INCOME AVERAGING
Applicants seeking utilization of income averaging pursuant to Section 42(g)(1)(c) (“Income Averaging”) may not contain unrestricted or market rate units. One hundred percent (100%) of the units must be affordable to persons at or below eighty percent (80%) of the area median income (“AMI”) or less as long as the average development income and rent limit is 60% AMI. In order to be considered eligible for Income Averaging, Applications must provide a market study evidencing demand for proposed targeted incomes and equity and debt commitment letters confirming utilization and approval of Income Averaging. Applications must not contain more than four (4) income targets and shall reasonably distribute units of similar size and income targeting through the property regardless of assigned income restrictions.

Income Averaging and Existing LIHTC Housing Developments

- Existing Housing Credit developments already placed in service and that have made a set aside election on federal Form 8609 **are not eligible** to change their minimum set-aside election to income averaging unless explicit guidance from the IRS states this is permissible.
- Income averaging is available, at the discretion of each allocating agency, to new developments making their minimum set-aside election after March 23, 2018.
- The IRS is not required to provide guidance to the state allocating agencies before they may permit income averaging.

Income Averaging and Vouchers

- Vouchers play a significant role in the sustainability of LIHTC housing.
 - 40% of LIHTC units nationally utilize rental assistance.
 - 70% of Extremely Low Income (ELI) tenants utilize vouchers.
- LIHTC property managers cannot discriminate against a tenant for using a voucher, unless the rent charged exceeds the voucher rent.
 - Has traditionally not posed an issue with averaging AMI percentages.
- If rent is set to 60% - 80% of area median income (AMI), LIHTC rents may begin to exceed voucher rents.
 - Provides a loophole to discriminate against voucher holders.
 - Will have a significant impact on the availability of housing for ELI renters.

Income Averaging and Vouchers

- Allocating agencies can underwrite tax credit deals using income averaging to assume the acceptance of voucher holders in the cost of building operations.
 - This can help to advocate that LIHTC property managers must continue to take a renter using a voucher.
 - Ex. From PHFA Program Compliance Guidance on Income Averaging:
 - Project owner that elects Income Averaging may not reject tenancy from a person holding a Section 8 voucher regardless of income target
- While this may defeat the purpose of income averaging in some cases, voucher acceptance is vital for housing the most vulnerable tenants.

Income Averaging and Foreclosure

- Mixed-Income LIHTC properties experience foreclosure 10 times more often than non mixed-income properties.
- As such, income averaging could cause higher rates of foreclosure.
- When LIHTC properties foreclose, affordability restrictions are removed.
- Allocating agencies need to implement additional protections to prevent foreclosures that could reduce the availability of affordable housing.

Key Points

- Determine if your state allocating agency has issued guidance.
- Connect with the allocating agency board and staff to learn how the state is or will be addressing Income Averaging.
- If you believe income averaging to be detrimental to your clients, advocate that your state's agency "wait" for guidance from the IRS or limit the opportunity for Income Averaging .
- Encourage your agency to underwrite owners who elect Income Averaging to obligate owners to accept vouchers regardless of income target
- Encourage your agency to create protections against foreclosure to preserve affordable units

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