

TCAP Funds = Federal Financial Assistance: Housing Provider Must Pay for Reasonable Modifications

Since 1986, the low-income housing tax credit program (LIHTC) has been the primary federal program for financing the development of affordable rental housing. The program awards tax credits to affordable housing developers who sell the credits to investors to raise capital, avoid debt, and offer affordable rents. Between 1987 and 2006, the LIHTC financed 29,225 projects and over 1,670,000 housing units.

Under the Fair Housing Act, housing providers who do not receive federal financial assistance must allow a person with a disability to make reasonable modifications to the dwelling unit or to common areas *at the tenant's expense*. Reasonable modifications are structural changes made to a resident's living space or to the common areas of a community, which are necessary to enable a resident with a disability to have full use of and enjoyment of the housing.

Despite the federal government's role, the LIHTC has generally not been defined as "federal financial assistance." Properties that receive federal financial assistance must pay for reasonable modifications requested by a tenant unless there is financial and administrative hardship. Because the LIHTC program has not been considered federal financial assistance, an affordable housing community that receives only tax credits is not required to pay for reasonable modifications.

The recent economic crises have had profound effects on the LIHTC program's ability to attract investors to develop affordable housing. Before being nationalized, Fannie Mae and Freddie Mac used to buy large quantities of LIHTC. However, Fannie Mae and Freddie Mac stopped buying tax credits because they have no need to offset their taxes, causing the market price for tax credits to plummet. According to Senator Cantwell's office, the amount of equity capital raised to fund affordable housing dropped by more than half, from \$9 billion in 2007 to about \$4 billion in 2008, jeopardizing hundreds of affordable housing communities across the country.

To help resolve the financing crisis facing the LIHTC program, the American Recovery and Reinvestment Act (ARRA), signed into law on February 17, 2009, included two funding sources for Low-Income Housing Tax Credit projects: the Tax Credit Assistance Program (TCAP) and the Section 1602 Tax Credit Exchange Program (Exchange). The TCAP program is administered by the U.S. Department of Housing and Urban Development and appropriates \$43,010,192 to the Washington State Housing Finance Commission to support the completion of LIHTC projects approved between October 1, 2006 and September 30, 2009.

Funds awarded under the HUD TCAP program are considered federal financial assistance and LIHTC communities that receive TCAP funds now must pay for reasonable modifications. However, because TCAP is considered federal financial assistance, LIHTC communities that receive TCAP funds are considered federally

subsidized and must pay for reasonable modifications requested by tenants who have disabilities.

Reasonable modifications can include structural changes to interiors and exteriors of dwellings and to common and public use areas. Examples of reasonable modifications include:

- widening a doorway for a wheelchair user
- installing grab bars in a bathroom
- lowering kitchen cabinets to a height suitable for a wheelchair user
- adding a ramp and handrails to make a primary entrance accessible
- altering a walkway to provide access to a public or common use area.

RESOURCES AND GUIDANCE

HUD/DOJ Joint Statement on Reasonable Accommodations –
www.usdoj.gov/crt/housing/joint_statement_ra.pdf
www.hud.gov/offices/ftheo/library/huddojstatement.pdf

HUD/DOJ Joint Statement on Reasonable Modifications –
www.usdoj.gov/crt/housing/fairhousing/reasonable_modifications_mar08.pdf
www.hud.gov/offices/ftheo/disabilities/reasonable_modifications_mar08.pdf

Fair Housing Accessibility First – www.fairhousingfirst.org
toll-free Design and Construction Resource Center: 888- 341-7781

Sample Policy: Service Animals – www.kingcounty.gov/civilrights/SA.pdf

HUD Disability Rights and Resources – www.hud.gov/offices/ftheo/disabilities

HUD, “Disability Rights in Housing” –
www.hud.gov/offices/ftheo/disabilities/inhousing.cfm

HUD, “Insurance Policy Restrictions as a Defense for Refusals to Make a Reasonable Accommodation” – www.fairhousing.com/include/media/pdf/insuranceguidance.pdf