Community Revitalization, Civil Rights, and the Low Income Housing Tax Credit Program

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The Low Income Housing Tax Credit Program is the latest federal low income housing production program to be challenged by civil rights advocates for perpetuation of racial segregation by failing to expand housing opportunity outside of low income, distressed, minority concentrated areas. This article presents original calculations based on existing data as applied to measures of community opportunity and distress utilized by two federal agencies. This research raises questions about the efficacy of LIHTC investment as a revitalizing tool in highly distressed census tracts, even if approved as part of a concerted community revitalization plan. The article argues for national standards and guidance for state agencies which ensure that the benefits of revitalization are indeed afforded to the residents of distressed communities, who will otherwise continue to suffer the dual harms of racial segregation: separate and unequal.

Introduction

Civil rights and fair housing advocates have long challenged the use of federal housing resources to contain low income people of color in high poverty, racially isolated, low-opportunity areas (Julian & Daniel, 1989). These advocates argue in favor of using those resources to remove the vestiges of segregation and expand housing opportunity. Others, including some low income housing developers and advocates, argue that use of those resources to develop or preserve low income housing in predominately white, non-distressed, higher opportunity areas will divert the use of those resources from the revitalization of blighted low income and minority concentrated areas (Clamore, 1989).

While both sides of the discussion often endorse the idea of some sort of "balance" in addressing the issues, the nature of that balance, and the considerations that are involved in striking it, remain the subject of both policy and legal advocacy. The latest iteration of that tension involves the Low Income Housing Tax Credit program (LIHTC) and the extent to which placement of LIHTC units in distressed areas with a history of racial segregation can be justified by the concept of "community revitalization"(Lawrence, 2013; Roisman, 1998). The purpose of this paper is not to delve into all the issues involved in that debate, but to highlight how existing data and measures of community distress and opportunity used by two governmental agencies, the U.S. Department of the Treasury and the Department of Housing and Development, can inform the policy discussion.

The Low Income Housing Tax Credit Program

The LIHTC program was created in 1986 to subsidize the production of high quality affordable rental housing for low income households. Today it is the largest affordable rental housing production program in the country. The

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LIHTC is a limited resource, and the competition for the 9% credits is highly competitive in most states. The tax credits made available under the program are not only a valuable public resource creating much needed affordable housing, but are a valuable resource to the private for-profit and non-profit housing sectors, providing millions of dollars in tax credits and other returns to investors, banks, syndicators and for-profit and non-profit developers annually.

This article argues that public policy that places or maintains low income housing resources in high poverty, distressed locations which do not offer opportunities to low income families related to education, employment, environmental health, and safety should be justified. If the justification is that low income housing will, alone or as part of a comprehensive plan, revitalize a community, there must be an objective basis for that claim. Where the locational policy of an affordable housing program will perpetuate historic segregation, containment, and denial of access to equal opportunity to low income minority families, there is a also legal imperative to justify that result.

Concerted Community Revitalization Plans: States Need Federal Guidance

In 2001 the federal tax code was amended to include several "preferences" for applications for tax credits which meet certain criteria. Among those is a preference for applications to develop housing in low income areas ("qualified census tracts" or QCTs) which would "contribute to a concerted community revitalization plan."

Pursuant to the LIHTC statute, states administer their LIHTC programs through the annual promulgation of a Qualified Allocation Plan (QAP) which sets out the terms upon which that year's allocation of tax credits will be made. Unfortunately, the LIHTC statute supplies no details on the required content of a "concerted community revitalization plan," and to date the U.S. Treasury Department has not provided any regulatory or other guidance on that requirement.

Unsurprisingly, this non-regulated LIHTC environment resulted in widely divergent approaches to implementation of the "concerted community revitalization" requirement. A 2002 study of QAPs throughout the nation found that while many states put some form of the community revitalization preference in the QAP, issues of content and accountability remained (Gustafson & Walker, 2002). Even with changes resulting in more specific requirements, several respondents indicated that it remained difficult to prove that projects actually contributed to revitalization plans because of how broadly "plans" were defined. A recent review of selected QAP s suggests that things have not changed much in the intervening decade (Khadurri, 2013).

The position of the author is that if concerted revitalization plans are not working to provide the benefits of revitalized neighborhoods to the residents of the low income affordable rental housing being developed, then that justification for the continued and disproportionate placement of tax credit units in low income distressed and minority concentrated areas falls short, particularly from a civil rights perspective.

In order to be able to assess the efficacy of LIHTC developments as part of revitalization plans, the government could and should undertake data gathering and analysis to address the question of what constitutes an effective concerted community revitalization plan, what is required to demonstrate that a proposed LIHTC development will contribute to that plan, and what a community revitalized under that plan would look like. However, until that happens, there is currently available data that can and should be used to inform the discussion. This article will use an analysis of HUD LIHTC, U.S. Treasury, and HUD voucher data to address these questions.

LIHTC Unit Location

The Department of Housing and Urban Development (HUD) collects and analyzes the census tract location of the nation's tax credit units by various demographic characteristics including race and ethnicity.[1] While there is missing data for some variables, the address, total units, low income units, and allocation year variables are available for 99% of the projects and units.[2] While not designed specifically to look at the issue of community revitalization, this and other available data does provide some basis for examination of the contention that the revitalization impact of LIHTC units, as currently implemented, is sufficient to justify the placement of units in low income, distressed, minority concentrated areas.

In addition to providing individual project and unit data, HUD publishes summary reports for the data, including census tract tax level credit unit location data by tracts with greater than 50% minority concentration and greater than 30% of people below the poverty line.[3] The jurisdictions for which the comparisons are reported include the nation, regions, states, and Metropolitan Statistical Areas. The national percentage of LIHTC units in tracts with a minority population of greater than 50% increased from 40% as of the 1995–2000 data to 44% as of the 2007 data. The percentage of LIHTC units in tracts with more than 30% people below the poverty line increased from 18.1% as of the 1995-2000 data to 21.7% as of the 2007 data.

Analysis Using HUD and Treasury's Indicators of Distress and Opportunity

While not developed for the purpose of examining the LIHTC program's relationship to community revitalization, both HUD and Treasury developed in other contexts, standards and indicators for assessing what constitutes a non-distressed, sustainable community. It is reasonable to expect that a concerted community revitalization plan in the LIHTC context be consistent with those standards.

Treasury's CDFI Distress Indicator Index

The U.S. Treasury is responsible for administering the Community Development Financial Institutions (CDFI) program, which provides money to community based financial institutions to assist with community development and revitalization. In order to target the CDFI funds to those areas most in need of that assistance, the Treasury developed a Distress Indicator Index which it uses to determine the census tracts in which the residents are enduring the highest levels of distress and are the most in need of revitalization. The Treasury's CDFI Distress Index is based on 2005-2009 U.S. Census American Community Survey census tract data on poverty rates, median household income, and unemployment rates. The Distress Indicator Index is on a scale of 0 to 4 with 4 being the highest level of distress and 0 being no distress.

Methodology

The original calculations which were done for this paper are based on the HUD LIHTC database for the allocation of non-elderly units in metropolitan areas as of 2009. The metropolitan area designation includes central cities and suburbs but does not include units allocated in rural, non-metropolitan areas. The analysis of the HUD data is divided into two periods: allocations prior to 2001 and projects receiving allocations between 2001 and 2009. Units allocated prior to 2001 are those which presumably have had the longest period to have had a revitalization effect on the community. While those allocations did not reflect the statutory preference for applications in QCTs which are part of a concerted revitalization plan, to the extent that low income housing investment alone can act as a catalyst for revitalization, units in place for a longer time would be relevant to the inquiry. Likewise, units allocated between 2001 and 2009 presumably were impacted to some degree by the statutory preference for applications in QCTs which are part of a concerted revitalization plan, and it is relevant to examine the degree to which the distressed communities in which units are located are showing credible signs of revitalization.

Findings

Our calculations show the national percentage of non-elderly, metropolitan area tax credit units located in census tracts at the highest Distress Index level of 4 is 41% for units allocated prior to 2001, and 44 % allocated between 2001 and 2009. The national percentage of such units located in census tracts at the lowest Distress Index level of 0 is 9% for units allocated prior to 2001, and 7% allocated between 2001 and 2009 (see Figure 1 below). The national percentage of non-elderly metropolitan units located in census tracts at the 1, 2, and 3 Distress Index levels is essentially the same for the units allocated before 2001 and the units allocated in 2001 through 2009.[4] These results do not appear consistent with substantial nationwide revitalization effects from the development of tax credit units, whether or not the units are part of concerted community revitalization plans.

HUD's Housing Choice Voucher "Opportunity Index"

The LIHTC program prohibits denial of occupancy to tenants because of their participation in the HUD Housing Choice Voucher program. This requirement evidences at least a presumption by Congress that LIHTC units should be available as a crucial resource to families with vouchers who often struggle to identify good quality apartments they can rent. Indeed, in metropolitan areas, where voucher holders are disproportionately people of color, the presences of LIHTC units in the housing market can be a significant factor in what sort of housing choices are likely to be available to low income families of color using Section 8 Rental assistance.

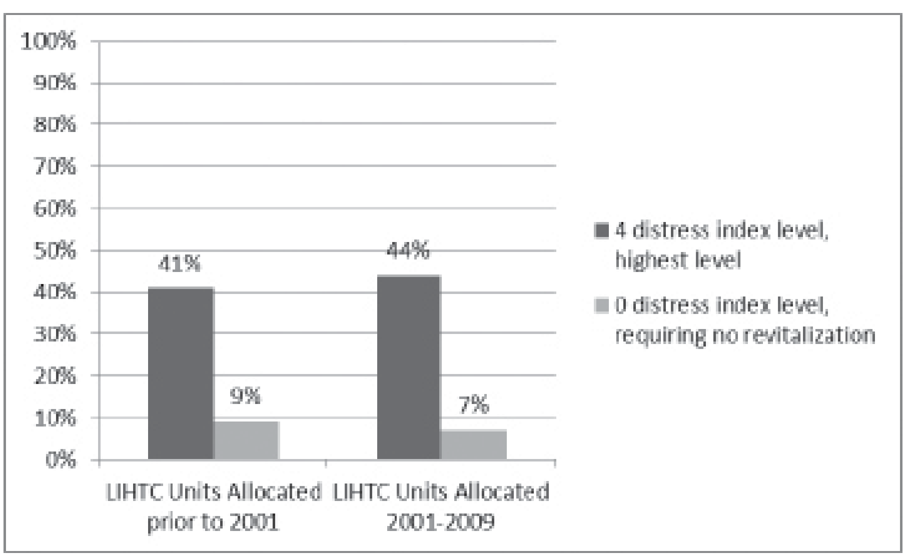

Figure 1. LIHTC units and the CDFI Distress Index (non-elderly, metropolitan)

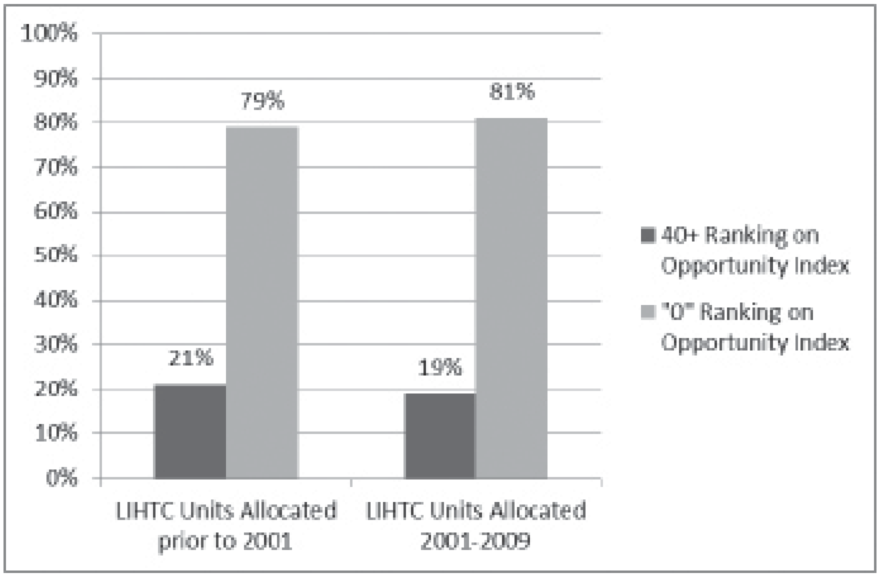

Figure 2. LIHTC Units and the HUD Opportunity Index (non-elderly, metropolitan)

Opportunity Index

HUD developed a HCV Opportunity Index used for gauging the adequacy of the opportunities presented to residents of urban area census tracts. The Index measures each census tract and block group in the country for the potential opportunity it offers HCV holders seeking to locate improved housing and neighborhood conditions. The index takes into account a wide variety of demographic data including race and ethnicity, housing data, affordable housing data and changes in that data. The primary index uses "0" to indicate an absence of such improved housing and neighborhood conditions. Areas where improved conditions exist are scored on a scale from 40 to 100. (McClure, 2011)

Findings

Our calculations reflected in figure 2 combine the HUD LIHTC allocation data with this Opportunity Index. 21% of the non-elderly, metropolitan area tax credit units with allocations made prior to 2001 were in census tracts with opportunities sufficient to rank at least 40 on the Opportunity Index. 79% were in census tracts with an Opportunity Index of 0. For allocations of tax credit units made from 2001 and 2009, 19% were in census tracts with opportunities sufficient to rank at least 40 on the Opportunity Index. 81% were in census tracts with an Opportunity Index of 0.[5]

To the extent that the placement of LIHTC developments are expected to serve as a catalyst for neighborhood revitalization , these results do not suggest substantial, nationwide revitalization effects from the use of LIHTC units whether or not the units are part of concerted community revitalization plans.

A Local Case Study

The data above can be used at the local level to analyze a proposed allocation of tax credit in the context of the goal of revitalization of a distressed community. Such an analysis was done for the City of Dallas of allocations of LIHTC units prior to 2013 by the law firm representing the Inclusive Communities Project (ICP).[6] The accompanying maps plot the location and approval year of each LIHTC project in the City of Dallas, Texas against the Opportunity Index and Distress Index discussed above. The findings show that 99.6% of the LIHTC units in the City of Dallas are located in census tracts with a "0" HUD Opportunity Index rating, and 85% of the units are located in census tracts with a highest CDFI Distress Index Level of 4 (see Figure 3). The local analysis also draws upon data and analysis depicting the 27 most crime-prone areas of Dallas ("hot spots"), where people are most likely to be victimized by crime, as determined by the Dallas Police Department's computer analysis that incorporates layers of data, including gang activities, residences of parolees, and daily police reports. 45% of the LIHTC units in the City were located in the 27 "hot spots" identified by the DPD.

Conclusion

There should be national standards on what "community revitalization" requires, both from a public policy and civil rights perspective, as it relates to a locational preference for LIHTC units. Those standards must reflect national policy and law, while allowing for state-determined priorities reflecting local conditions. Ultimately, they must work at the local level to achieve the goal of providing low income housing in healthy, safe, communities of opportunity.

Any public policy that requires that LIHTC units

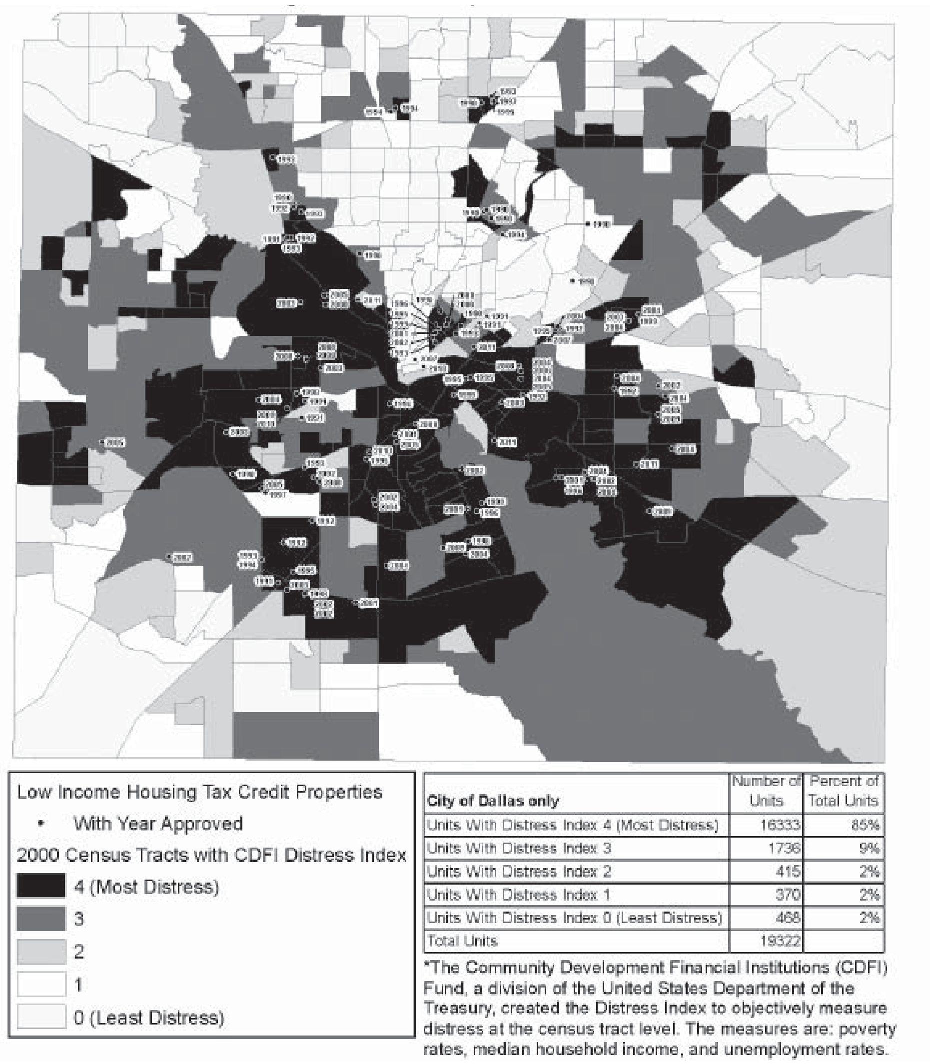

Figure 3. City of Dallas Low Income Housing Tax Credit Properties and CDFI Distress Index*. *Source: TDHCA LIHTC 2012 Property Inventory, CDFI Distress Index, Census 2000. Last Updated: September 2012.*

continue to be allocated to currently highly distressed areas must carry with it a heavy burden of justification, particularly where those areas are the product of historic segregation and discrimination. If it is that the units will be the catalyst for "revitalization" then there must be a plan, based on reasonably objective information that the revitalization is achievable, and the proposed LIHTC development will contribute to that effort. In addition here must be objectively documentable standards for results consistent with that plan within a quantifiable and reasonable period of time. Finally, to insure ultimate accountability to the low income families that are most affected by such decisions, there must be a private cause of action under the Fair Housing Act's obligation to affirmatively further fair housing against the governmental entities propounding such policies if they fail to deliver.

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Endnotes

[1] The data can be downloaded from the HUD PD&R website: http://www.huduser.org/portal/datasets/lihtc.html. HUD has added data to the database since the analysis for this report was completed. The data in this report is contained in the current version of lihtcpub.dbf. "All LIHTC data using 2010 data are available through the interactive system for accessing the LIHTC Database at http://lihtc.huduser.org/. Users may select variables of interest, retrieve data on all projects in a particular State or group of States, restrict the search to projects with a particular characteristic or set of characteristics, select only projects in a particular city or county, or all projects within a user-selected radius of the center of a city. Alternatively, you can download the entire database. The file, LIHTCPUB.ZIP, is a ZIP Archive file containing the following:

- LIHTCPUB.DBF: The LIHTC Database in dBASE format. Approximately 68 MB.
- multiadd.DBF: Multiple address data for some projects in the LIHTC Database in dBASE format. This file was not updated to include the 2008 through 2010 properties. Approximately 4.8 MB.
- DATADCT.PDF: The data dictionary for the LIHTC database (multiple address data use same formats) in Adobe Acrobat. 33 KB."

[2] The Government Accountability Office also noted the missing data, but determined that there was adequate information to analyze various aspects of the tax credit program.

[3] U.S. Department of Housing and Urban Development (HUD), "Updating the Low Income Housing Tax Credit (LIHTC) Database," Projects Placed in Service through 2000," December 2002, Exhibit A-6, Additional Census Tract Characteristics of LIHTC Units by Location Type, 1995 - 2000, page 53; U.S. Department of Housing and Urban Development (HUD), "Updating the Low Income Housing Tax Credit (LIHTC) Database," Projects Placed in Service through 2007," February 2010, Table 29, LIHTC and All Rental Units by Tract Characteristics and Location Type, 1995 - 2007, page 27. Both reports are available from HUD User at http://www.huduser.org/portal/datasets/lihtc.html.

[4] The EXCEL spreadsheet with the HUD/CDFI dta and calculations summarized is available upon request from the Inclusive Communities Project, Inc. through the Daniel & Beshara, P.C. law firm.

[5] The EXCEL spreadsheet with the HUD/Opportunity Index data and calculations summarized is available upon request from the Inclusive Communities Project, Inc. through the Daniel & Beshara. P.C. law firm.

[6] That analysis can be found on the Daniel & Beshara, P.C. website. (Daniel & Beshara).