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More Affordable Housing, But Where, and for Whom?

Brian N Biglin

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More Affordable Housing, But Where, and for Whom?
A New Jersey Study revealing the Low Income Housing Tax Credit’s Impact, and the Ongoing Concentration of the Poor

Brian N. Biglin†

Introduction

Since its inception as part of the Tax Reform Act of 1986, the Tax Credit for Low-Income Rental Housing (Low Income Housing Tax Credit, “LIHTC”) has been the most significant government subsidy for the provision of affordable rental housing. The program has grown significantly in size, especially in recent years. In 2001, states received $1.50 per capita to dedicate to tax credits for qualifying projects; by 2010, this federal expenditure rose to $2.10 per capita. Even in its early days, LIHTC was called the most generous tax credit in history. By 2000, one million units of affordable housing—compliant with metro-specific rent caps and tenant income restrictions described in this paper—had been created nationwide by use of the LIHTC. By 2008, that total reached over 1.76 million.

Despite this impact, the geographical distribution of the millions of housing units

† J.D. Candidate, 2011, Rutgers University School of Law, Newark, New Jersey. Senior Articles Editor, Rutgers Law Review. A.B., Economics, University of Michigan. This paper is dedicated to the memory of the late Professor John Payne, whose tireless work for socioeconomic integration in housing created an entirely new and important frame of reference to always consider when analyzing any housing policy, such as the LIHTC. Thank you to Professor Peter Simmons for encouraging this paper, providing its first review, and teaching Rutgers students about the impact of Professor Payne; the Class of 2011 arrived in Newark just a few months too late to know Professor Payne personally, but we have nonetheless come to appreciate his work.

1 Florence Wagman Roisman. Article: Racial Segregation in Housing: The Role of the State, the Necessity of Race-Conscious Remedies, and Other Lessons from the Mount Laurel Study. 27 SETON HALL L. REV. 1386, 1405 (1997).
2 MATTHEW BENDER, FEDERAL TAXES AFFECTING REAL ESTATE § 5.04 (Low-Income Housing Tax Credits) (Lexis 2010). Interestingly, the per capita expenditure increased through 2009, reaching a peak of $2.30, but in 2010 the program suffered its first curtailment. Id.
created by the LIHTC has not satisfied some of those for whom socioeconomic integration is a priority.\textsuperscript{6} This is particularly true in New Jersey, in spite of its bold \textit{Mt. Laurel}\textsuperscript{7} mandate requiring municipalities to take affirmative steps to ensure that affordable housing is available statewide.\textsuperscript{8} While Essex County (the seat of which Newark) realized over 4,000 LIHTC units through 2007, only 353 low-income units had sprouted in the more populous Bergen County.\textsuperscript{9} Within Essex County, 84\% of the LIHTC units were built inside the 24 square mile City of Newark.\textsuperscript{10} The nearby suburban cities of Belleville, Bloomfield, Glen Ridge, Montclair, Milburn, West Orange, and South Orange saw no LIHTC developments during the first 21 years of the program,\textsuperscript{11} nor did any of the developing municipalities of Essex County’s fringe.\textsuperscript{12} As a general matter, this suggests that the LIHTC has been used to improve affordable housing in the cities where such housing has traditionally been in the greatest demand, but not in the cities where the \textit{Mt. Laurel} mandate says that such supply should be increased.

After providing an overview of how the LIHTC functions in Part I, this paper will engage in a statistical analysis of the characteristics of the housing being created by the LIHTC in Part II. In particular, it will describe the tenant composition of LIHTC developments and the degree of socioeconomic integration seen in LIHTC developments.

\textsuperscript{6} See, e.g., Roisman, \textit{supra} note 1; Seema Ramesh Shah, \textit{Note: Having Low Income Housing Tax Credit Qualified Allocation Plans Take into Account the Quality of Schools at Proposed Family Housing Sites: A Partial Answer to the Residential Segregation Dilemma?} 39 IND. L. REV. 691 (2006); and Dan Nnamdi Mbulu, \textit{Article: Affordable Housing: How Effective are Existing Federal Laws in Addressing the Housing Needs of Lower Income Families?} 8 AM. U.J. GENDER SOC. POL’Y & L. 387 (2000).


\textsuperscript{9} LIHTC Database Access, updated through 2007, \url{http://lihtc.huduser.org/} [hereinafter \textit{LIHTC Database}]. Bergen County is New Jersey’s most populous county.

\textsuperscript{10} See \textit{id}.

\textsuperscript{11} West Orange became the first generally affluent city in Essex County to have a development making use of LIHTC, in 2007. See \textit{id}. 
and their immediate neighborhoods. It will then consider, in Part III, the different viewpoints on LIHTC’s role in a Mt. Laurel regime, demonstrating how the goals of regional housing authorities administering the LIHTC, and the developers that seek the credit, have justifiably differed from those who seek the fulfillment of Mt. Laurel directives.

I. Overview of LIHTC

A. Eligibility

The LIHTC provides yearly business tax reductions for ten years to qualifying properties selected by state or local housing agencies. Once a qualified property is selected, it must comply (by continuing to meet eligibility) for 15 years. An eligible property is a new or rehabilitated house or building that meets one of the following set-aside tests:

a) at least 20 percent of the units are rent-restricted and occupied by individuals whose income is 50 percent or less of the area median gross income;

b) at least 40 percent of the units are rent-restricted and occupied by individuals whose income is 60 percent or less of area median gross income, or

c) at least 15 percent of the units are rent-restricted an occupied by individuals whose income is less than 40 percent of the area median gross income.14

12 See id.

13 Laura Hunter Dietz, Qualified low-income buildings, 33A AM JUR 2D FEDERAL TAXATION P 15203 (West 2010). After 15 years, no additional credit can be received, so the developers’ options include continuing to operate as low-income provider, increasing rents, selling to a new owner, or engaging in additional upgrades in the hopes of qualifying for a new credit, or other subsidies. A HUD property owner’s survey reported that 71 percent of non-profit developers and 49 percent of for-profit developers planned to continue low-income housing provision with their buildings, with a significant amount undecided. See Appendix C.

14 Dietz, supra note 13, at 15203.
Rent restricted units are those for which gross rent does not exceed 30 percent of the income level component of the set aside test; thus, a landlord meeting the 20-50 test must restrict the rent in 20 percent of the units to 30 percent of half the area median gross income.\textsuperscript{15} For instance, the restricted rent in a 20-50 development where median gross income is 40,000 per year would be $500 per month.\textsuperscript{16}

Area Median Gross Income is based upon the HUD methodology used for Section 8 of the \textit{United States Housing Act of 1937}, where median household income estimates are based on census data and Department of Commerce County Business Patterns employment and earnings data.\textsuperscript{17} These median annual income figures are calculated for metropolitan areas defined by HUD; however, these ‘metropolitan areas’ are generally not defined in a manner consistent with the common use of this term. For instance, there are nine different “metropolitan areas” identified in New Jersey, including “Newark,” which includes Essex and Union county, “Bergen-Passaic,” which includes those two named counties, and “Jersey City,” which encompasses all of Hudson County; this is quite different from how many people would consider these three “metropolitan areas” part of a single, larger area.\textsuperscript{18} These narrow breakdowns are very significant for determining median incomes and the set-aside values that flow from those medians. For example, the Newark metro median is nearly $30,000 higher than the Jersey City median.\textsuperscript{19}

\begin{footnotes}
\item[15] \textit{Id.}
\item[16] $40,000 (.50) \times .30 = 6,000 \text{ in rent per year, or }$500 \text{ in rent per month.}$
\item[17] Bender, \textit{supra} note 2, at § 5.04[3][iii][B]
\item[18] See \url{http://www.huduser.org/datasets/fmr/fmrs/fy2009_code/select_Geography.odb}
\end{footnotes}
In sum, eligible developments must meet the set-aside requirements in which property owners cap rent at a particular percentage of median gross income and ensure that those rent-restricted dwellings are inhabited by a household that has an income below the percentage of median gross income specified in the set-aside requirement (from 40 to 60 percent). Thus, eligibility requires more than just offering affordable housing; rather, it entails affirmatively creating and setting aside a supply of affordable housing for those who need it.

B. Incentives and the Legislative Intent

The just-described eligibility grounds identify what types of projects may apply for the LIHTC. The rationale for these eligibility grounds rests on a simple premise. This section will explain that premise and engage in a brief aside about the method chosen to effectuate it.

Incentives are properly used when, without them, a private actor would not engage in a socially beneficial activity because he/she could not profit. Cost-reducing mechanisms like subsidies or tax credits are incentives since, if appropriate in size, they will cause rational actors to engage in a formerly unprofitable activity. The business of providing quality housing for those who have very little ability to pay is socially desirable (and necessary), but not inherently profitable, which explains the basis for a targeted incentive like the LIHTC.

The LIHTC is indeed an incentive for the private sector to build and renovate low-income rental housing to increase the affordable housing stock for those who need it.\textsuperscript{20} It has been an alternative to public housing projects, which lost favor in the second

\textsuperscript{20} Tracy A. Kaye, \textit{Sheltering Social Policy in the Tax Code: The Low-Income Housing Credit}. 38 Vill. L.
half of the last century when it became clear that the first wave of “urban renewal” was largely a failure.21 Aside from the high costs of building and maintaining municipally owned housing projects,22 the actual design of those projects actually disserved the poor by facilitating crime and vice.23 Further, developers’ interest shifted toward smaller-scale projects, such as the simple rehabilitation of extant buildings.24 Though large public housing authorities still operate in most large cities, the supply of public housing has shrunk while unmet demand for affordable housing has grown. Since the 1960s, Congress has thought it “more efficient for the private sector to use government subsidies to build, own, and operate housing.”25

A tax incentive in the form of a credit for low-income housing was selected as a means to enact social policy by shaping market behavior. Congress made the LIHTC a permanent part of the tax code in 1993 when, after several years of experimentation, it decided to “provide a more coordinated and targeted tax subsidy.”26 It also arrived as many alternative types of subsidies such as Section 8 contracts with landlords suffered deep cuts.27

A tax credit is equivalent to a direct subsidy, and it is most appropriately called a

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21 See, e.g., Brian N. Biglin, Note, Toward Successful Urban Revitalization: Why New Jersey Should Relinquish Some of its Berman Power to Bulldoze for ‘Redevelopment,’ 63 RUTGERS L. REV. ___ (2010) (discussing the failure of the housing projects that were built on top of Newark’s former Little Italy as one of many examples of the failure of big block, high rise housing projects); see generally JANE JACOBS, THE DEATH AND LIFE OF GREAT AMERICAN CITIES (1961).
22 This form of “urban renewal” required massive federal support. See, e.g., MARTIN ANDERSON, THE FEDERAL BULLDOZER 1-38 (1964).
23 See, e.g., OSCAR NEWMAN, DEFENSIBLE SPACE: CRIME PREVENTION THROUGH URBAN DESIGN (1973); JACOBS, supra note 18, at 110-111.
25 Kaye, supra note 29, at 877.
26 Mbulu, supra note 6, at 412
tax expenditure because providing the incentive requires the government to forgo tax
revenue.\textsuperscript{28} It is widely supported as a way to push the private sector to accomplish social
aims, especially since “the most convenient form of subsidizing a businessman is through
his income tax.”\textsuperscript{29} There are other benefits of tax expenditures from the political and
procedural viewpoint of the Congress, but that fact leads to an entirely different
discussion.\textsuperscript{30}

Besides its significance to taxpayers, the choice of a tax credit makes for very
straightforward administration of a subsidy. With a credit, the government can plan its
expenditure in advance—placing a ceiling (in dollar terms) on the amount of credits
available in a year, permitting state or city agencies to award credits up to that defined
limit. And, once awarded, a credit reduces a taxpayers’ final tax payment on a dollar-for-
dollar basis, as opposed to representing a deduction of their taxable income.\textsuperscript{31} Thus, there
is simplicity to tax credits in multiple respects.

C. Computing and using the credit

The size of the credit received, which is to be reduced from the final tax bill, is
computed by multiplying the ‘qualified basis’ of each approved low-income project by
the ‘applicable percentage’ for the building.\textsuperscript{32}

The qualified basis is given by multiplying a project’s eligible basis by its

\begin{footnotesize}
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\item[27] See Kaye, \textit{supra} note 31, 877-78. This story was also explained in Joseph Barry’s personal account of the
history of low-income housing development.
\item[28] Id. at 872-74.
\item[29] Id. at 873.
\item[30] Id. at 874. Generally, there are procedural benefits for Congress because in increasing the tax credit they
do not have to go through the procedures associated with creating and increasing spending.
Congresspersons can also avoid telling their constituencies that they have “raised spending,” even if they
voted to increase the expenditure on low-income housing through a tax credit.
\item[31] Guggenheim, \textit{supra} note 3, at 5.
\item[32] Dietz, \textit{supra} note 13, at 15202.
\end{footnotes}
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applicable fraction (low-income occupancy rate). The eligible basis includes construction costs of “facilities for the use of the tenants, other facilities reasonably required by the project, and amenities (e.g., appliances and air conditioning units) to the extent that the cost of such facilities and amenities in the low-income units are comparable to the cost of the items in any unsubsidized” units in the development. The land costs, the costs of market rate units, and financing costs are not part of the basis for the credit. The costs of residential common areas, a unit occupied by a full-time security officer, and “facilities reasonably required by the project” are includable. The eligible basis as determined by the costs above is reduced by the amount of any federal grants made to the building during the ten-year compliance period. The applicable fraction applied to this is the smaller of the “unit fraction” or the “floor space fraction,” which simply denotes the fraction of units in the building that are low-income and the fraction of the floor space which is reserved for low-income tenants, respectively.

For any building located in a HUD-designated ‘qualified census tract’ or ‘difficult development area,’ “the building’s eligible basis is 130 percent of what it would otherwise be under the rules.” Qualified census tracts are those where more than half of the households have incomes less than 60 percent of the median gross income or where the poverty rate is 25 percent or higher; difficult development areas are any area which HUD designates as having high construction, land, and utility costs relative to area

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33 Bender, supra note 2, at § 5.04[4]. If a building is used as transitional housing for the homeless, the qualified basis is increased by the lesser of either the costs of providing support services to assist tenants in finding permanent housing or 20 percent of the qualified basis of the building. See Dietz, supra note 13, at 15206.

34 Bender, supra note 2, at § 5.04[4][b].

35 Id.

36 Dietz, supra note 13, at 15209

37 Id. at 15207.

38 Id. at 15206.
median gross income, but encompassing not more than 20% of the population of a metropolitan area.\textsuperscript{40}

An across-the-board requirement for rehabilitations of extant buildings is that the building must have been acquired by purchase (not through nontaxable exchange), must not have been previously substantially improved (if at all) in the ten years before acquisition, and must not have previously been in service as a LIHTC property.\textsuperscript{41}

To determine the size of the credit, the qualified basis is multiplied by an applicable percentage rate determined by the IRS which floats slightly from month to month, holding around 8 percent for new construction and major rehabilitations, and around 3 percent for most rehabilitations and projects where the developer has other received federal subsidies.\textsuperscript{42} The applicable percentage at the time of the tax credit award is the percentage that applies each year for the length of the credit. Over the 10-year credit period, this means the present value of the credit is roughly 70 to 80 percent of the qualifying costs of new buildings and major rehabilitations, and roughly 30 percent of the same for other buildings.\textsuperscript{43}

D. Administration of the credit money

Each state receives a yearly allocation of credit money which, in effect, is its allocating agency’s ceiling on the amount of credits administered in a year, directly constraining the amount of projects the allocating agency can bring into the program each

\textsuperscript{39} \textit{Id.} at 15208.
\textsuperscript{40} \textit{Id.}
\textsuperscript{41} \textit{Id.} at 15209.
\textsuperscript{42} \textit{Id.} at 15202, 15205
\textsuperscript{43} \textit{Id.}
year.\textsuperscript{44} How a state with more requests than available credits uses its discretion to grant credits to a limited amount of developments presents issues regarding site placement and segregation, which will be described in the Part B analysis. Importantly, the tax code requires state agencies to annually report to the Secretary of the Treasury regarding their allocations.\textsuperscript{45}

In 2008, each state received credits totaling the greater of $2 per capita (thus, over $17 million for New Jersey) or $2.325 million (for very small states).\textsuperscript{46} Each state’s housing credit agency (sometimes the agencies are regional or municipal based, as in New York) grants credits to qualified projects until the state reaches its annual ceiling—the amount allocated to it for that year, plus unused old credits, credits returned from projects which stopped using the credit before ten years, and credits allocated from other states.\textsuperscript{47} Sometimes, special additional credits are granted, as has recently been the case in Gulf Coast regions rebuilding from natural disasters.\textsuperscript{48} If a credit valued at $1 million over ten years is allocated to a qualifying project, then the state counts $100,000 toward its annual ceiling (the per year payout of the credit). The LIHTC further stipulates that at least 10 percent of the credits allocated each year must go to non-profit developers.\textsuperscript{49}

As suggested above, a person seeking the credit for a project goes to their state or regional allocating agency to demonstrate the project’s eligibility and other details. The agency will then select among the eligible proposals, in accord with its allocation plan (which each issuing agency is required to develop).\textsuperscript{50} Developers (even non-profits)

\textsuperscript{44} Id. at 53-54
\textsuperscript{45} Bender, supra note 2, at § 5.04[1].
\textsuperscript{46} Id.
\textsuperscript{47} Id.
\textsuperscript{48} Dietz, supra note 13, at 15211
\textsuperscript{49} Id. at 15210
\textsuperscript{50} Guggenheim, supra note 3, at 3.
normally form syndicates, because corporations can use unlimited amounts of the tax
credit, but individual investors who pay income tax are capped in their use.51 Once
awarded, the state agency “is responsible for monitoring and inspecting projects for
compliance,” and the owners must make annual certification.52 This includes annual
reviews of tenant eligibility and certification that the set-aside ratio is still being met.53
This administrative burden should be taken into account by investors undertaking
affordable housing projects.54

II. Results of the LIHTC, and the enduring problem of segregation

A. Impact of the credit

1. How many LIHTC units have been developed, and where?

Through 2008, $10 billion in credits had been awarded for the production of
nearly 1.76 million new or rehabilitated housing units.55 California, the most populous
state, had over 134,000 LIHTC units. Texas had the most, at nearly 197,000. After
Florida came New York, with over 86,000 units. New Jersey had reached nearly 33,000
units of LIHTC housing through 2008. Other major users of the LIHTC included Ohio,
Michigan, Illinois, and Pennsylvania; each of these had development more than twice as
many units as New Jersey.56

Through 2007, Newark had been the beneficiary of 35 LIHTC projects resulting
in 3,410 qualifying affordable units. In the same time span, 1,015 units were developed in

51 Id.
52 Id.
53 Id. at 71
54 Bender, supra note 2, at § 5.04 [2]
55 For an overview of credit allocations nationwide over the course of the LIHTC, see Danter Company,
56 For state-by-state records, see Danter Company, Detailed Allocations With Estimated Population,
http://www.danter.com/taxcredit/allocpop.htm
Jersey City, and only 214 units in Hoboken, two cities that enjoyed considerable demand for market-rate housing development in the last two decades. In New York City, the Bronx, followed by Brooklyn, were the boroughs with the far greatest use of LIHTC.57

Applying these reported totals to census data, fully 2.8% of Newark’s housing units came into their current being through the LIHTC, as of 2005. Although roughly one-quarter of the City’s households are in poverty, it is significant that 2.8% of the City’s housing has been recently rehabilitated or newly built, and reserved for the low-income population. The LIHTC has affected Newark’s housing stock in a manner similar to other distressed cities. As of 2005, 2.04% of the housing stock was LIHTC conforming in the Bronx, and 2.20% of housing in Detroit was compliant with LIHTC.58 Other distressed cities in New Jersey have used LIHTC to different extents. Trenton had seen 29 projects producing 1,393 units through 2005, making 4.12% of its housing stock LIHTC conforming. Camden’s 1,246 units equaled 4.20% of its housing units. Paterson had seen less dramatic change: 12 projects yielded 551 units, which is only 1.2% of its total units. Among large cities, few have seen as much change as Cleveland, Ohio, where its nearly 8,800 LIHTC units created through 2005 made up 4.07% of its housing stock.59

In 2008, the last year for which nationwide statistics were released, over 91,000 LIHTC conforming units were added, up from a low point in 2000 when only 59,000 units were built. The year with the largest growth in use of the LIHTC was 1989, when

57 All of these figures are reported by HUD and can be accessed online. See LIHTC Database, supra note 9.

58 See id. Compare to 2.49% in Gary; 2.61% in Memphis; 2.62% in Flint, and 3.12% in St. Louis, as of 2005. See id.
59 The figures in this section again came from HUD’s reporting at “LIHTC Database Access,” http://lihtc.huduser.org/; this paper uses the latest Census Bureau statistics on total housing units within various cities to report the percentages herein. Cleveland’s use of LIHTC was particularly astounding: it produced more qualifying units than Detroit, despite having half the population and half the number of
126,200 low income units were put into LIHTC service. In 1989 the average allocation per unit was $2,434. By 2008, the average allocation per unit was over $10,000, and the country’s total allocation was nearly two and a half times larger than 1989.\textsuperscript{60} The increase in per unit allocation indicates that developers being awarded the LIHTC have significantly higher costs, and it could possibly indicate that the average quality or size of a new or rehabilitated affordable unit has increased.\textsuperscript{61} Whether these increases are to the advantage of the tenants who reside in these developments is unclear. It may be that the standard of living for some low-income Americans is increasing because of LIHTC, with developers using the more generous subsidy to build better-appointed spaces.\textsuperscript{62} However, if these more generous awards are simply consumed by higher costs of construction supplies and labor, the rate of growth of the LIHTC housing stock has been suppressed in spite of the Congress’ ever-increasing allotments.

Some indicia of the characteristics of low-income housing in general will be briefly assessed next, an exercise which yields clues as to whether there’s been a significant positive overall effect on the quality of affordable housing since the LIHTC began. Then, this paper will examine the characteristics of LIHTC housing, using Northern New Jersey as a case study.

2. Has LIHTC use increased the standard of living of low-income renters?

Residents of LIHTC units generally find improvement in their standard of living projects.
\textsuperscript{61} Id. From 2005 to 2006, the average allocation nationwide per unit jumped from $8,673 to $10,218. However, after 2007 a slow decline in this amount began.
\textsuperscript{62} Bender, \textit{supra} note 2, at § 5.04[1] tracks the increase in per capita allocations to the states. Congress has increased the per capita expenditure from $1.50 per person to well over two dollars, since 2001.
as compared to their former dwellings.\textsuperscript{63} Whether the LIHTC has substantially ameliorated the conditions of low-income housing as a general matter is harder to discern. While reliable data suggests that there has been some improvement in the standard of living for those under the poverty line, it is difficult to know whether, and to what extent, the LIHTC contributed to this. Furthermore, in some respects there has been little progress when it comes to improving housing for those in poverty. One hindrance inherent in the LIHTC’s administration is the fact that in some metro areas, because of high median incomes,\textsuperscript{64} LIHTC eligibility requirements permit the tax credit to be applied to projects whose tenants are well above the poverty line.\textsuperscript{65} The follow section will share findings on the conditions of North Jersey housing for those near or below the poverty line, utilizing the HUD American Housing Survey reports on North Jersey housing from 1995 and 2003, in addition to the Assessment of LIHTC produced in 2000 for HUD. These data pools contain clues on progress that the LIHTC achieved over a large window of time.

In a 2000 report on LIHTC properties in select metro areas across the country, the HUD Office of Policy Development and Research reported that a majority of LIHTC residents (68 percent in fact) rated their apartments good or excellent.\textsuperscript{66} Most believed that their living situation improved upon moving to an LIHTC property; 54 percent thought that their LIHTC unit was better, and only 22 percent preferred their old

\textsuperscript{63} See Buron, supra note 4, at xi (“How do the LIHTC properties compare to tenant’s previous residences?”)

\textsuperscript{64} Review section I.A, supra, to see how the incomes of eligible tenants for LIHTC projects can be quite high in some HUD-defined metro areas.

\textsuperscript{65} See Mbulu, supra note 6, at 423-24. The author critiques LIHTC’s underperformance when it comes to the poorest tenants, despite also reporting that “HUD ranked three-quarters of [LIHTC] households as ‘very-low income.’” \textit{Id.} at 418.

\textsuperscript{66} Buron, supra note 4, at Exhibit 3-13.
23 percent of the respondents said that they had moved from public housing.68

LIHTC properties generally stand out as good places to live within less desirable neighborhoods. The study suggests that new or rehabilitated LIHTC residences outpace the quality of nearby residences.69 54 percent of LIHTC residents said their neighborhood was poor, or just fair.70 If, from the standpoint of a city planner, LIHTC is a tool to ameliorate the conditions of low-income neighborhoods and offer higher-quality dwellings that will retain residents within cities that might otherwise lose population, then the overall data suggests that LIHTC is a success.71 This idea is corroborated by looking at the positioning of many of the LIHTC developments in Newark (see subsection B.2, infra). If a planner’s ambitions are to regionalize low-income populations or affirmatively create integration within neighborhoods, then the LIHTC has mostly failed (see subsections C.2 and 3, infra).

As to whether the LIHTC has had a large enough impact to improve the standard of living for the poor in general, there is no clear answer. The theory underpinning a ‘yes’ answer would be that the LIHTC, in addition to injecting new higher-quality living spaces into the low-rent market, affects the rest of the market by forcing other landlords to improve their properties and/or lower their rents, perhaps by applying for LIHTC credits themselves. In some instances, this ideal scenario might be playing out, to the benefit of low-income areas. The data on Northern New Jersey, however, makes it impossible to attribute any improvements in the low-income housing stock directly to the

67 Id.
68 Id. at Exhibit 3-11.
69 See Id. at Exhibit 3-15.
70 Id.
LIHTC just yet. Also, North Jersey might have a problem in that the LIHTC can help many low-income residents, but not the poorest, because LIHTC restricted rents are often set at a fairly high rate thanks to the high median incomes across the area, on which LIHTC restricted rents are based.\textsuperscript{72}

In Northern New Jersey, 144,600 renting households were in poverty in 2003, down from 176,000 in 1995.\textsuperscript{73} Of these impoverished households, 7.2 percent lived in structures less than eight years old; this is a marked improvement over 1995, when 2.6 percent lived in buildings less than eight years old.\textsuperscript{74} This is the best evidence that LIHTC and the thousands of units it produced in Newark and its area are having a measurable effect.

Having said this, it is important to once again return to the idea that the LIHTC benefits are not necessarily directed to households in poverty.\textsuperscript{75} It is, in fact, not difficult for a developer to serve many qualified low-income households or individuals under the LIHTC without admitting anyone who is actually in poverty, at least in parts of New Jersey, where regional median incomes can approach $100,000 per year. For instance, in the Newark metro in 2010 the county median income was $87,900 per year.\textsuperscript{76} A LIHTC user going by the 20-50 test would thus have to make sure that a household in a rent-

\textsuperscript{71} Indeed, one stated goal of the New Jersey Home Mortgage Finance Agency in its allocating of LIHTC is revitalizing poor urban areas. This is covered \textit{infra} at III.B.
\textsuperscript{72} See section I.A., \textit{infra}.
\textsuperscript{73} \textsc{Current Housing Reports, American Housing Survey for the Northern New Jersey Metropolitan Area in 1995 and 2003}. [Hereinafter \textsc{Surveys}]. Table 4.1, “Introductory Characteristics-Renter Occupied Units.” In the survey, “Northern New Jersey” included all areas of Bergen, Essex, Hudson, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, and Union Counties.
\textsuperscript{74} See \textit{Id}.
\textsuperscript{75} For a brief explication of LIHTC under-inclusiveness with regards to those in poverty, once again see Mbulu, \textit{infra} note 6, at 418-425.
\textsuperscript{76} The Danter Company reports the 2010 median income figures that HUD uses in determining ‘fair market rents’ for each metro area, including Newark. See Danter Company, \textit{Query Results: 2010 Income limits for existing properties (Essex, NJ)}, \url{http://www.danter.com/taxcredit/getrents.asp?state=nj&county=essex}
restricted unit (designed to house, say, four occupants-- since the median household income is based on the median household size of around four) made no more than roughly $44,000 per year.\textsuperscript{77} This is nearly twice the national poverty line for a family of four.\textsuperscript{78}

For Newark, this is cruelly ironic. Though it is the namesake of a metro area, that area also includes some of the nation’s wealthiest boroughs, among other generally affluent towns whose high median incomes skew the metro median, thus inflating the rent-restricted income by which LIHTC properties in impoverished central city neighborhoods have to abide. That said, one would expect that many of the Newark LIHTC developments, especially those created by non-profits with the express purpose of helping those with very low income, in fact restrict the rent lower than the LIHTC code requires. Nonetheless, this illustration shows the potential for LIHTC benefits to be channeled to a socioeconomic stratum that its framers may not have envisioned. Interestingly, however, this fact has not enticed many developers to attempt to mix LIHTC units with market rate units, even though the people buying the market rate apartments might be only marginally wealthier than those qualifying for LIHTC apartments. (\textit{See} subsection C.3, \textit{infra}).

The 1995 and 2003 North Jersey Housing Surveys regarding housing conditions of the impoverished also show many persistent problems that raise doubt on the LIHTC’s impact. The percentage of impoverished households that reported spending more than one day in uncomfortably cold conditions in their own home did not decrease (roughly 30

\textsuperscript{77} A household occupying a LIHTC unit qualified under the 20-50 test may not make more than half the median household income for the HUD-defined metropolitan area. \textit{See} section I.A., \textit{supra}.

\textsuperscript{78} \textit{See} U.S. Department of Health & Human Services, Computations for the 2011 Annual Update of the HHS Poverty Guidelines for the 48 Contiguous States and the District of Columbia,
percent).\(^{79}\) A higher percentage reported heating system breakdowns and ‘inadequate heating capacity’ in 2003 than 1995.\(^{80}\) A significantly higher amount reported that they had a toilet/sewer breakdown in recent months.\(^{81}\) While only 2.4 percent reported living in cramped conditions of less than 300 square feet per person in 1995, this number increased to 7 percent in 2003.\(^{82}\) This directly suggests a housing supply shortage during a time of immigration-driven population increases.

On the whole, the room for improvement when it comes to the living conditions of impoverished New Jerseyans is manifest. The LIHTC is a tool that can help, but one can see how its usefulness in this regard could be drastically improved if a) the program’s funding was increased, b) the range of eligible tenants was narrowed, at least in some metro areas, and/or c) the rent caps for the various set-aside options were lowered to 30 or 40 percent of median income rather than the current 50 and 60 percent options.

B. Distribution and attributes of Credit-produced housing

1. At a nationwide level

Of the 15,096 projects and 1.1 million units produced 1995-2005, the average project was moderately large and dedicated almost all of its units to low-income tenants. On average, a project contained 73 units and was 95.1% comprised of LIHTC qualifying units. Only 1.2% of projects dedicated less than 40% of their space to LIHTC units, even though developers can choose set-asides as low as 15 or 20 percent. Most developers dedicated as much as possible to LIHTC units; 82.6% of projects 1995-2005 were more

\(^{79}\) See SURVEYS, Table 4-6
\(^{80}\) See id.
\(^{81}\) See id.
\(^{82}\) See id. at Table 4-3.
than 96% dedicated to low income tenants. This is consistent with HUD’s finding that
92% of non-profit developers and 52% of for-profit developers listed “helping low
income people” as their development objective.

Nationwide from 1995-2005, 64 percent of projects were new construction, 34
percent rehabilitation, and 2 percent mixed both. In the northeast region, however,
rehabilitations were far more common; 58.6 percent of projects were rehabilitations and
only 38.8 percent were new construction. In Newark, roughly 50 percent of projects
through 2005 were new construction, although in terms of units produced rehabbed
apartments outnumbered new apartments by a 2:1 ratio. Nationwide, 28.9 percent of
LIHTC projects were completed by nonprofits, and 19.8 percent used tax-exempt
bonds. Remarkably, 41 percent of projects used no other subsidies; most, still, relied on
one other subsidy source. The average unit was just under 2 bedrooms in size, although
23% of LIHTC units contained three or more bedrooms.

Generally, there is a fairly even distribution of LIHTC development across urban,
suburban, and non-metro areas. Nationwide, 44% of projects and 49.3% of all units were
in central cities; 31.3% of projects and 37.8% of units were produced in suburban areas,
with the remainder appearing outside of metro areas. This balance can mostly be

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83 Table 1: Characteristics of LIHTC Projects, in HUD NATIONAL LOW INCOME HOUSING TAX CREDIT
(LIHTC) DATABASE: PROJECTS PLACED IN SERVICE THROUGH 2005 (NOV. 2007) (A report prepared by Abt
Associates for HUD).
84 Annex Table 4.1: Owner’s Development Objectives By Selected Characteristics, in The Department of
Housing and Urban Development’s LIHTC Property Owners’ Survey.
http://www.huduser.org/publications/affhsg/lihtcsurv.html
85 Id. at Table 2
86 Id. at Table 12.
87 See LIHTC Database
88 PROJECTS PLACED IN SERVICE THROUGH 2005, supra note 83, at Table 2
89 See id. at Table 5.
90 Id. at Table 1.
91 Id. at Table 14.
attributed to use of the LIHTC in newly-developing areas of the south and west. In the northeast, meanwhile, 61.4% of LIHTC units were produced in central cities. Of central city units, 46.1% were the product of rehabilitations, compared to 26.5% of suburban units.

The system of HUD-designated Difficult Development Areas and Qualified Census Tracts, which gives extra incentive under the LIHTC to build in these tracts, appears to be working, as 42.4% of all projects 1995-2005 came in DDAs or QCTs.

Among all central city LIHTC developments, 34.2% of the units are in census tracts where more than 30% of people are in poverty, and 65.4% of central city units have been produced in neighborhoods that have majority renter populations, suggesting that the LIHTC has been used in places where its benefits are in high demand.

2. In Northern New Jersey (a primer for Part III)

In northern New Jersey, LIHTC projects are heavily concentrated in central cities, generally in poor areas. The distribution of projects across the City of Newark and its adjacent cities depicts this vividly.

As reported in the introduction, 84 percent of the LIHTC units produced in Essex County through 2007 appeared in Newark. Most of the rest appeared in poor adjacent cities such as East Orange (227 units), Orange (345 units), and Irvington (60 units). A look at neighboring counties shows that LIHTC projects generally appear in large numbers in distressed cities like Elizabeth, Jersey City, and Paterson. Yet other cities that

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92 See id. at Table 15.
93 See discussion supra, Section I.C.
94 Id. at Table 19
95 Id. at Table 22.
96 All statistics and data about LIHTC developments in this section are attributable to the LIHTC Database.
contain large numbers of working class residents had seen little or no activity: through 2007 there had been no LIHTC projects in Harrison, Kearny, Belleville, or Bloomfield. Only two projects could be found in Passaic, two in Bayonne, and three in Union City. The trend is the same across the Hudson: Mount Vernon, next to the Bronx, had seen only 10 LIHTC projects, all on its poorer south side.

Twenty-two of the 35 LIHTC projects produced through 2007 in Newark are located in a narrow swath of the city’s west side south of Central Ave. and along and north of Clinton Avenue. Six projects are located in poorer areas of the northern wards, four projects are found in the southern Weequahic section, and only one small LIHTC development appeared in the city’s East Ward—the working-class Ironbound section. That development was beyond South Street, far removed from the core of the Ironbound, and much closer to the other struggling parts of Newark.

Based on the distribution of LIHTC units in Newark, it can be concluded that LIHTC projects are readily conceived in distressed urban areas that have the attributes of either abundant vacant land or buildings in need of repairs. Community development non-profits, and, more recently, for-profits, who are interested in remaking distressed neighborhoods and offering modern low-rise housing in lieu of the often-demolished mid-century projects, have seized upon the ample vacant land in the central and western portions of Newark. Examples include the United Community Corporation, the New Community Corporation (both non-profits) and the for-profit group of developers who have produced over 200 units of look-alike, suburban-style townhouses along and between Kinney and 18th Avenue.

Across the city— and in every case in Weequahic— rehabilitations have frequently been awarded LIHTC support. Larger apartment buildings from the early 20th century have been rehabilitated and converted to low-income housing in four separate cases in the northern section of Weequahic. Similar in this regard are the unique Lincoln Park Tower, Lock Street Apartments, and Bakery Village, an award-winning Brownfield Redevelopment at a former factory site on the Bloomfield-East Orange-Newark border.99

With one exception, every LIHTC project in Newark has been 99 or 100 percent dedicated to low-income units. This is in accord with the national trend, and not surprising considering the need for low-income housing in Newark, the desire for developers to maximize government support for inner city rehabilitation projects that might be seen as risky by investors, the role of goal-oriented non-profits and others who want to maximize the supply of decent affordable housing,100 and the prevailing view that most of Newark is a home for the poor and working class and thus the place where non-profit developments should properly occur.101

The exception is the Tiffany Manor development on the Newark-Belleville border, where a factory site was renovated and turned into market rate housing, with 26 of 130 units in LIHTC conformity under a “20-50” set aside. Such developments are rare not only in Newark but across the region and country. On this note, the extent to which

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98 New Community Corporation, About New Community, http://www.newcommunity.org/about/
99 Developer RPM Development Group won the 2002 Smart Growth Award from New Jersey Future, a smart-growth organization. See description of the project and its award at: http://www.njfuture.org/index.cfm?cfn=9t45e1o30y9g&emn=5u92y86g2h42&fuseaction=user.item&ThisItem=414
101 See NEW COMMUNITY CORPORATION, ABOUT NEW COMMUNITY CORPORATION, available at http://www.newcommunity.org/userimages/file/About%20NCC.pdf (stating the organization’s “mission ‘to help residents of inner cities improve the quality of their lives to reflect individual, God-given dignity and
LIHTC has or has not broken down socioeconomic segregation will be assessed shortly.

As has been suggested, LIHTC housing in Newark has been predominantly split between new low-rise, townhouse style developments that occupy entire blocks and rehabilitations of mid-rise apartment buildings. Most projects have produced between 50 and 150 units; LIHTC credits have not been used in Newark for small-scale projects such as rehabilitation of a single 3-unit house or duplex, although this is common in some cities. The largest single project yielded 754 units; only one other project—the Hill Manor Apartments on Martin Luther King Jr. Blvd—was nearly as large, and it has since been demolished.\footnote{The project was a rehabilitation of a pre-existing high-rise project.}

The quality of the housing produced in Newark appears to be quite high, and the developments, with the exception of the defunct Hill Manor (now replaced with low-rise housing), have had great staying power. The rehabilitations often produced affordable units in high-quality brick buildings in good locations; some of them overlook Weequahic Park, while another anchors the Lincoln Park neighborhood. Most have good transit availability, being located on or near Broad Street, Clinton Avenue, or Springfield Avenue. Lock Street Apartments and Bruce Street Gardens are unlike many of the developments in that they are adjacent to central Newark’s major institutions like New Jersey Institute of Technology and University Hospital. These developments, in addition to the Tiffany Manor and the rehabilitated apartments along Lincoln Park and Weequahic Park, demonstrate that the LIHTC has not only housed the poor in traditionally poor neighborhoods, but is mixing quality, affordable housing into some more desirable and/or centrally located areas of Newark. Nonetheless, the concentration of large-scale low-rise
developments placed among public housing and generally distressed neighborhoods of Newark’s west side raises a red flag for many; though these developments represent an improvement over public housing projects in terms of quality and layout, and though these developments are truly ameliorating previously divested neighborhoods, they are not progressive in terms of fostering socioeconomic diversity.

3. Who lives in credit-produced housing? (Also a primer for Part III).

A nationwide survey of LIHTC projects found that 14% of LIHTC projects had predominantly white residents, 77% have predominantly minority residents, and only 9% had substantial proportions of both.103 The survey found that 44% of projects have about the same percentage of minority residents as their surrounding neighborhood; over half have a higher share of minority households than the neighborhood at large, suggesting a segregating impact.104 The study showed that 60% of LIHTC property residents nationwide were black, and 81% were racial/ethnic minorities; at non-profit properties, 96% of tenants were minorities.105 The mean household income of LIHTC residents in 1999 was $18,449 (roughly the poverty line at that time), and at that time 27% of LIHTC households made under $10,000/year. Eleven percent of tenant households made more than $30,000/year.106 Ten percent were receiving public income assistance, and 69% were currently working for pay.107 Among LIHTC projects, six percent of households were using section 8 vouchers, and 31% were in units with project-based section 8; the

103 Buron, supra note 4, at xiii “Do LIHTC properties foster racial diversity?”
104 Id. at 4-19
105 Id. at 3-1
106 Id. at 3-3
107 Id.
mean annual household income of this group was just over $12,000.\textsuperscript{108}

III. Socioeconomic segregation and the LIHTC: should the LIHTC be used to reduce such segregation at a micro and/or macro scale?

A. Tenant composition in LIHTC developments are rarely socioeconomically diverse

As a general matter, developers are rarely choosing the minimum set-asides as their guideposts for coming into LIHTC compliance; rather, they are building and renovating with the usual goal of producing buildings entirely dedicated to rent restricted units.\textsuperscript{109} Whether this is good or bad depends on whether the legislative and administrative priority is to maximize provision of decent, affordable housing or to avoid the setbacks of continued clustering of poverty and socioeconomic segregation. The stated aim of the LIHTC was the former, but remedying the latter is an opportunity that presents itself with LIHTC.

This opportunity has rarely been seized. As mentioned in Part II, only one development in Newark achieved socioeconomic mixing by abiding by the minimum set-aside. In suburban developments, too, the tenant composition tends to be close to 100 percent low-income. In Mount Vernon, only three of its 11 projects had income mixing, and these developments were still roughly 90\% low-income. Developments in Monticello, New Rochelle, and White Plains almost exclusively took on the role of being islands of the poor within relatively prosperous areas. Much the same held true in Yonkers, though it did have one notable example— St. James Terrace— where low-income units made up a portion of an otherwise market-rate development.

\textsuperscript{108} Id. at 3-6, 3-19
\textsuperscript{109} See discussion that follows about projects in general across New Jersey and New York. All data for this section comes from the \textit{LIHTC Database}. 

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Of the hundreds of developments across New Jersey, only 21 had more than a nominal level of mixing between affordable units and market rate units, although it is clear that the occurrence of such socioeconomically mixed developments has drastically increased since 2000. Prior to 2000, only four New Jersey developments were mixed-income: the Tiffany in Newark, and small developments in East Orange, Montville, and Atlantic City. Since 2000, the mixed-income developments have tended to appear in the booming cities along the Hudson River and in other suburban towns toward central New Jersey. The trend in North Jersey started with Lafayette Village in Jersey City, a new development focused on low-income housing, but with a significant reserve of market-rate apartments. Another early example was Marian Towers in Hoboken, a rehabbed building which reserved 32 of 156 units for market-rate renters. A similar development of over 100 units occurred in West New York. In 2005, two more projects became LIHTC compliant in Jersey City: Pacific Court and Journal Square tower. 21 of 72 units at the former are low-income, while the latter set aside roughly 20 percent of its 130 units for low-income tenants. Mixed-income developments have sprouted in Mount Laurel, Woodbury, Plainfield, Cresskill, Maple Shade (where there is a development with 293 LIHTC units out of 408 total), Camden, Trenton, and New Brunswick (where a development set aside 14 of 70 units for low-income). A 2006 development in affluent West Orange offered 37 LIHTC units together with 16 market rate units. Nonetheless, fully low-income developments have remained the most common scenario for both suburban and urban developments.\textsuperscript{110}

\textsuperscript{110} See \textit{id} for all statistics.
Mixed-income developments in New Jersey are, thus, most likely to be found in areas with high housing demand where the dense, diverse surrounding neighborhoods already feature much demographic mixing (e.g., Jersey City), or in wealthy areas like Cresskill or West Orange where high median incomes allow for the rent-restricted LIHTC units to be rented by a tenant who is effectively middle class. Fully-dedicated LIHTC projects are mostly likely to be found in poor sections of inner cities like Newark, or in suburban areas where the developments are set aside as islands for affordable housing within an area of uniformly higher priced housing.

Recently, public interest organizations in New Jersey, noting the lack of diversity in LIHTC developments brought suit asserting that the New Jersey Housing Mortgage Finance Agency, which allocates the state’s share of tax credits, was bound to “affirmatively further” the Federal Fair Housing Act by preventing discrimination and promoting integration.111 “Armed with statistics highlighting the impact of the state agency’s subsidized housing plan on segregation, the groups were rightfully concerned that the obligation was far from being met.”112 The New Jersey courts “declared that the state agency was bound by that duty and that all of its housing development activities, including the construction of its Qualified Allocation Plan (“QAP”)— the means by which the state agency decides to award tax credits— also were subject to the obligation.”113 However, the court said that race did not have to be taken into account, and that, to this point, the NJHMFA had fulfilled its duties.114

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112 Shah, supra note 6, at 691
113 Id.
114 Id. At 691-92.
B. Regional integration and views on the Mt. Laurel’s role

Given that LIHTC projects are predominately sited in poorer sections of New Jersey cities and rarely developed in the state’s upper and middle class enclaves, it is clear that the allocation of LIHTC credits, viewed in isolation, has not been in accord with the regional sharing aim for provision of affordable housing articulated by the Mt. Laurel holdings.\footnote{See generally Roisman, supra note 1. The Mount Laurel mandate states that “The New Jersey Constitution requires every developing municipality, through its land use ordinances, to provide a realistic opportunity for the construction of its fair share of the region’s low and moderate income housing needs. Mount Laurel I, supra, 67 N.J. at 174-75, 179-81, 187, 336 A.2d 713. Because the urban poor were disadvantaged by exclusionary zoning practices, the [*93] Court required every municipality, in its land use regulations, to provide a realistic opportunity for decent, affordable housing for the resident poor occupying dilapidated housing.” In re Adoption of Uniform Housing Affordability Controls, 390 N.J. Super. 89, 93 (App.Div. 2007) (citing Mount Laurel I, 67 N.J. at 174-75, 179-81, 187).} The LIHTC, an incentive to build low-income housing, which attaches extra incentives for housing created in high-cost areas, would seemingly help New Jersey carry out its goals.\footnote{See generally John M. Payne, Norman Williams, Exclusionary Zoning, and the Mount Laurel Doctrine: Making the Theory Fit the Facts 20 VERMONT L. REV. 665, 673-680 (1996) (explaining the difficulty that many New Jersey municipalities experience in fulfilling their obligation to create affordable housing opportunities required under Mt. Laurel).}

There are two primary questions at this point: why has the LIHTC not been used as a tool for accomplishing the Mt. Laurel mandate, and should it even be such a tool?

As to the first question, New Jersey’s LIHTC-allocating agency, the Housing & Mortgage Finance Agency, ought to have some input. There are several questions that it would be well suited to answer. Has the demand for the LIHTC by inner city developers exhausted the credit’s availability for suburban developments? Have suburban developers even been interested in the LIHTC in a substantial way? If such interest is present, has the NJHMFA’s allocating strategy prioritized urban developments instead? And, if not, does the NJHMFA believe it could successfully entice suburban developers to use the LIHTC by amending its Allocation Plan? Of course, at this point, we arrive at the larger,
normative question: are inner-cities in fact the better places to subsidize new and rehabbed affordable housing through means such as LIHTC, in spite of Mt. Laurel?

That second question invites a wide range of viewpoints. The New Jersey courts have already put forth one viewpoint. In 2004, the Appellate Division affirmed the use of LIHTC to target urban revitalization without regard to Mt. Laurel. In In re 2003 QAP, the court found that the New Jersey HMFA’s mission was to increase the supply of affordable housing and revitalize New Jersey’s urban areas.117 The court approved the HMFA’s 2003 allocation plan even though the “predominant focus [was] still on the allocation of tax credits to the urban areas.”118 Thus, if the state allocating agency does not shape its plans with regard to the Mt. Laurel mandate, the judiciary will still approve such plans and refrain from making LIHTC allocations an object for the enforcement of its Mt. Laurel regime. Others, however, suggest the court take a different stance.

“[LIHTC] can serve a particular unmet need in Mount Laurel: that for subsidized rental housing,” says Florence Wagman Roisman, who considers LIHTC to be one of the state’s “best opportunities for promoting racial and ethnic desegregation as well as economic integration and mobility from urban to suburban areas.”119 Roisman broadly suggests that allocating agencies focus on site selection and tenant selection criteria to meet these goals with the tax credit. She also suggests affirmatively pairing section 8 voucher holders with housing developers using LIHTC, since the section 8 voucher alone generally cannot obtain housing for voucher-holders in many suburbs.120 Further, tax credit beneficiaries would have to sign an agreement where they agree to not deny

118 Shah, supra note 6, at 705
119 Roisman, supra note 1, at 1405.
120 Id. at 1414-15.
housing to a prospective tenant on the basis of the section 8 voucher, under Roisman’s proposal.\textsuperscript{121} Roisman adds that the HMFA point system that decides which project proposals will receive the credit ought to give at least an extra point to projects that use section 8 waiting lists to find tenants, and that the State Attorney General’s office and public interest groups should test to make sure that LIHTC project owners are complying with all non-discrimination laws.\textsuperscript{122}

These and other possible avenues for harmonizing LIHTC with \textit{Mt. Laurel} have gained the interest of some public interest lawyers and housing advocates who support that mandate and who are dissatisfied with the provision of tax credits in New Jersey to this point.\textsuperscript{123} Their primary interest when it comes to integration is the distribution of low-income housing across all municipalities.\textsuperscript{124} Another more particular version of this view is concerned with the lack of racial integration in actual LIHTC projects, giving rise to proposals that race be considered in allocating agencies’ point systems.\textsuperscript{125}

Yet another viewpoint is possible, and this paper ends by setting it out. This perspective suggests that the LIHTC, even if potentially helpful in achieving regional integration, actually has a higher and better use for which it is much more befitting. This view sets the \textit{Mt. Laurel} mandate aside when discussing the LIHTC, and focuses on how socioeconomic integration can be achieved at a highly local level—on a project-by-project basis, for example. This approach acknowledges the benefits of further affordable housing development in central cities, and prefers LIHTC allocations in traditional urban neighborhoods that contain important infrastructure amenities—such as mass transit—

\textsuperscript{121} \textit{Id.} \\
\textsuperscript{122} \textit{Id.} \\
\textsuperscript{123} \textit{See generally id. at 1405-15; Shah, supra note 6.} \\
\textsuperscript{124} \textit{See generally Roisman, supra note 1, at 1405-15; Shah, supra note 6 (with a particular and laudable}
that are crucial to low-income and upper-income tenants alike. This approach sees developments in core urban areas as the best hope for achieving real socioeconomic integration through the LIHTC, especially in an era where more and more wealthy people are moving to urban centers. Instead of meeting this demand with housing developments built exclusively to house such wealthy new residents (thereby creating micro-level segregation), the LIHTC can be used to meet the sustained demand for affordable housing in the very same neighborhood, as part of larger developments that meet the market-rate demand.

This micro-focused approach states that developers using the LIHTC should ideally mix market-rate housing units with rent-restricted units that receive LIHTC benefits. In this way, diverse tenants will be integrated in a very real way—living under the same roof and being invested in the same neighborhood.\(^{126}\) The LIHTC program countenances this very usage of the tax credit in the manner that it allows developers to enjoy the credit when their development contains rent-restricted units on the order of 40 percent of the total units, or even as low as 15 percent in some scenarios.\(^ {127}\) If developers were encouraged to avail themselves of these minimum set-asides in becoming qualified for LIHTC funding, and if the HMFA showed a preference for such proposals in its Allocation Plans, the LIHTC could accomplish the most direct form of socioeconomic integration possible (albeit a type of integration not addressed by the Mt. Laurel mandate). Further, the annual impact of the LIHTC in terms of actual affordable housing units created would not change; rather, the subsidy for affordable units would simply be

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\(^{125}\) See generally Shah, supra note 6, at 706-11

\(^{126}\) This was accomplished once thus far in Newark, and once nearby West Orange. In the increasingly prosperous central neighborhoods of Jersey City, this mixing has also been achieved in a handful of
spread out across more developments in more locations.

Encouraging this use of the LIHTC is consistent with other policy goals in New Jersey, such as smart growth,\textsuperscript{128} transit oriented development,\textsuperscript{129} and the successful revitalization of ‘areas in need of redevelopment.’\textsuperscript{130} Simply put, a program which entices housing development and increased population density in a city center is more amenable to New Jersey’s overall urban policy than a program used to disperse people across the landscape.

Reasonable people can, and do, disagree on which of these viewpoints pursues a more important priority, and on whether achieving the \textit{Mt. Laurel} regime is more socially beneficial than small-scale integration and urban revitalization. It is hard to disagree, however, about the fact that segregation is continuing, and that, despite avenues for avoiding it, it is symptom that has persisted in spite of the benefits provided by the Tax Credit for Low Income Housing.

\textit{Afterword}

This paper has explored the LIHTC’s raw impact, made basic observations that are troubling for those interested in integration (whether regional or local), and made a distinct proposal for the ideal use of the LIHTC in New Jersey and elsewhere. However,

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\textsuperscript{127} See text accompanying footnote 14, \textit{supra}.
\textsuperscript{129} See generally \textbf{GREGORY K. INGRAM ET AL., SMART GROWTH POLICIES: AN EVALUATION OF PROGRAMS AND OUTCOMES} 177-87 (Lincoln Institute 2009) (noting that one of New Jersey’s top priorities has been to “revitalize the state’s urban centers” by building up dense, transit-connected “nodes.”).
\textsuperscript{130} See generally Biglin, \textit{supra} note 21, at ___
as the final subsection made clear, there are many unanswered questions that call for an explanation of the prevailing trends in LIHTC usage up to this point. Such questions will remain unanswered until new, probative research accompanies more recent and comprehensive statistics about LIHTC usage (HUD’s LIHTC database lags three to four years behind), and until allocating agencies like the NJHMFA provide their own statistics on who is seeking the LIHTC and who is receiving it. This paper calls on these parties to develop such a resource, and foresees subsequent articles that further elucidate new opportunities for the future use of LIHTC.