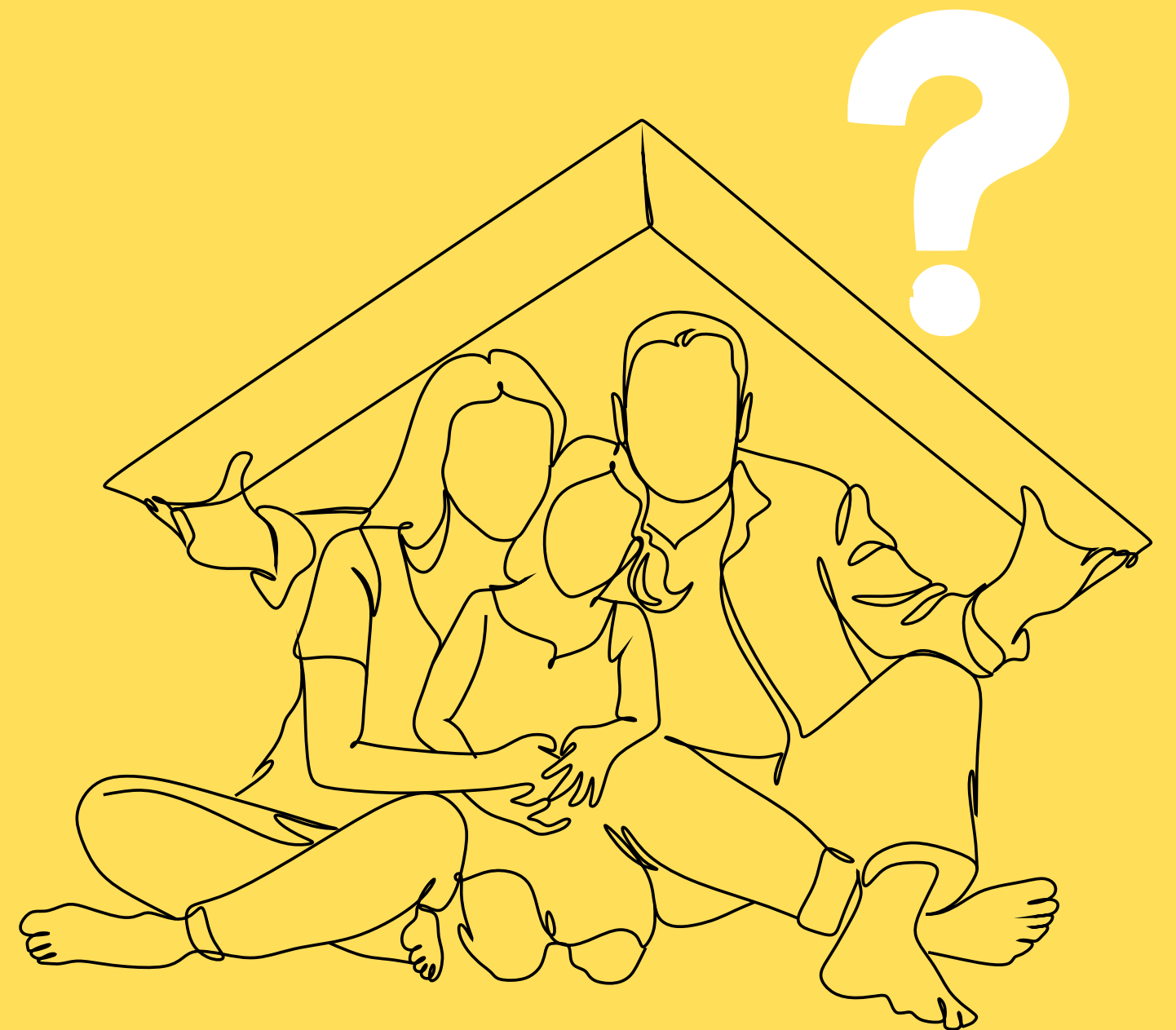


# **The Low-Income Housing Tax Credit (LIHTC):** ***Addressing the Need but not the Want.***

By Harsh J. Gagoomal  
PUBS 6230  
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# THE HISTORY OF LIHTC

*"The nine most terrifying words in the English language are: I'm from the Government, and I'm here to help. "*

The Tax Reform Act

**1986**



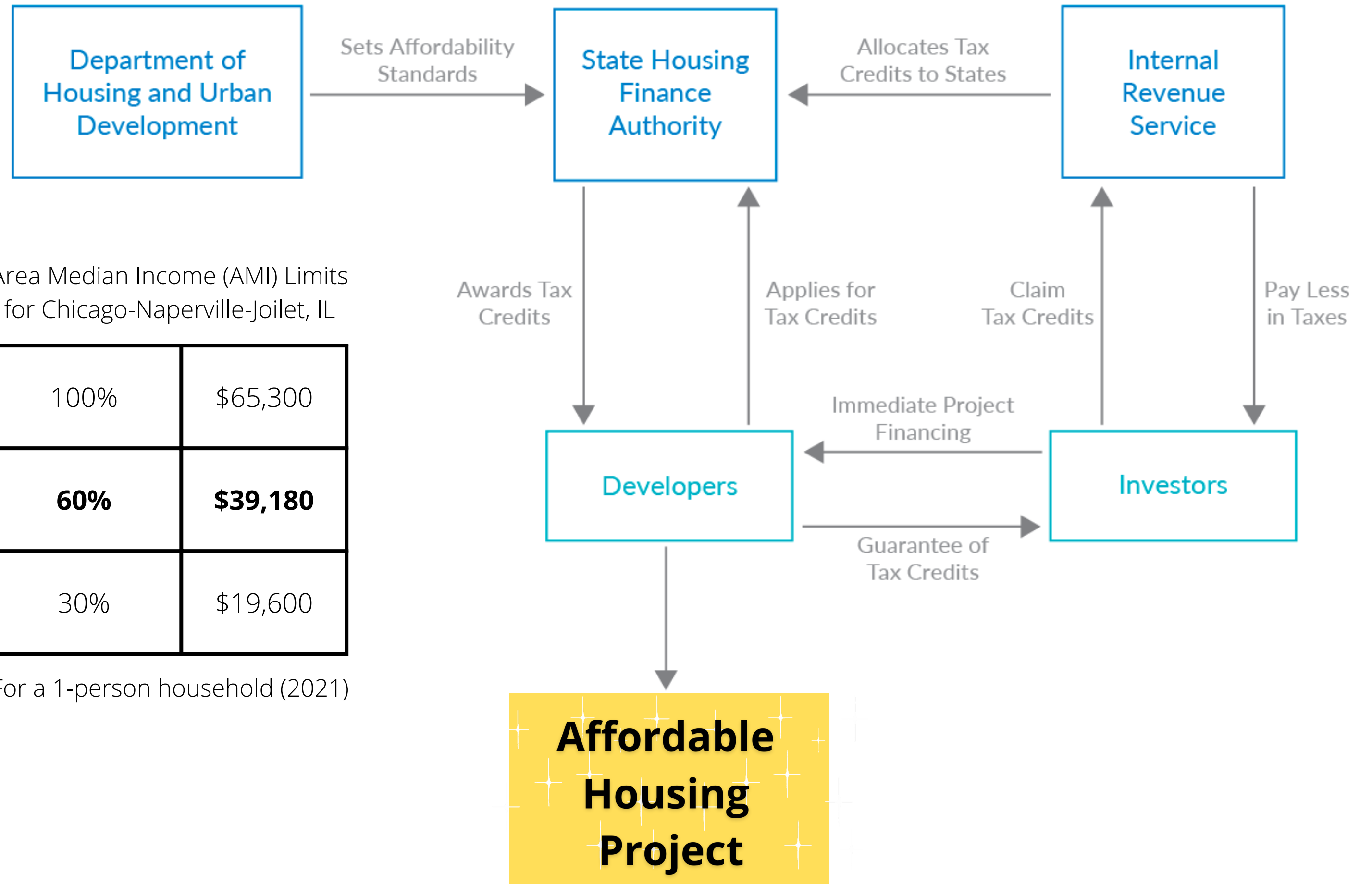
Ronald Reagan

# HOW?

Area Median Income (AMI) Limits  
for Chicago-Naperville-Joilet, IL

100%	\$65,300
<b>60%</b>	<b>\$39,180</b>
30%	\$19,600

For a 1-person household (2021)



# MY WHY



# Thesis

*The LIHTC program addresses the **need** but not the **want**.*

*Need:*



*Want:*



# METHODOLOGY

## Qualitative



Statutes, IRS  
Notices, Qualified  
Allocation Plans,  
Legal Cases



Policy Research  
Reports  
commissioned by  
HUD or developed by  
501(c)3 nonprofits

## Quantitative



CBPP's 2018 state data  
findings on the  
"Distribution of  
Housing Units by  
Poverty Rate;" Policy  
Research Reports



HUD's LIHTC  
database (2019);  
American Community  
Survey (US Census  
Bureau, 2010)

# FOCUS

## 26 U.S. CODE § 42 ("SECTION 42")

**1**

### **Concentrating Poverty and Furthering Segregation**

- 26 USC § 42(m)(1) - "Plan for Allocation of Credit Among Projects"

**2**

### **The Threat of Long-Term Unaffordability**

- 26 USC § 42(h)(6) - "Extended Use Period"
- 26 U.S.C. § 42(i)(7) - "Right of First Refusal"

**3**

### **Affirming Fair Housing and Community Revitalization**

- 24 CFR § 100.500 - "Discriminatory Effect Prohibited"
- IRS Notice 2016-77

# QUALIFIED ALLOCATION PLANS (QAP)

1

26 USC § 42(m)(1)

26 USC § 42(d)(5)(ii)

26 USC § 42(d)(5)(i)

(B) For purposes of this paragraph, the term “qualified allocation plan” means any plan—

- (i) which sets forth selection criteria to be used to determine housing priorities of the housing credit agency which are appropriate to local conditions,
- (ii) which also gives preference in allocating housing credit dollar amounts among selected projects to—
  - (I) projects serving the lowest income tenants,
  - (II) projects obligated to serve qualified tenants for the longest periods, and
  - (III) projects which are located in qualified census tracts (as defined in subsection (d)(5)(B)(ii)) and the development of which contributes to a concerted community revitalization plan

# DISPARITIES IN LIHTC HOUSING DISTRIBUTION

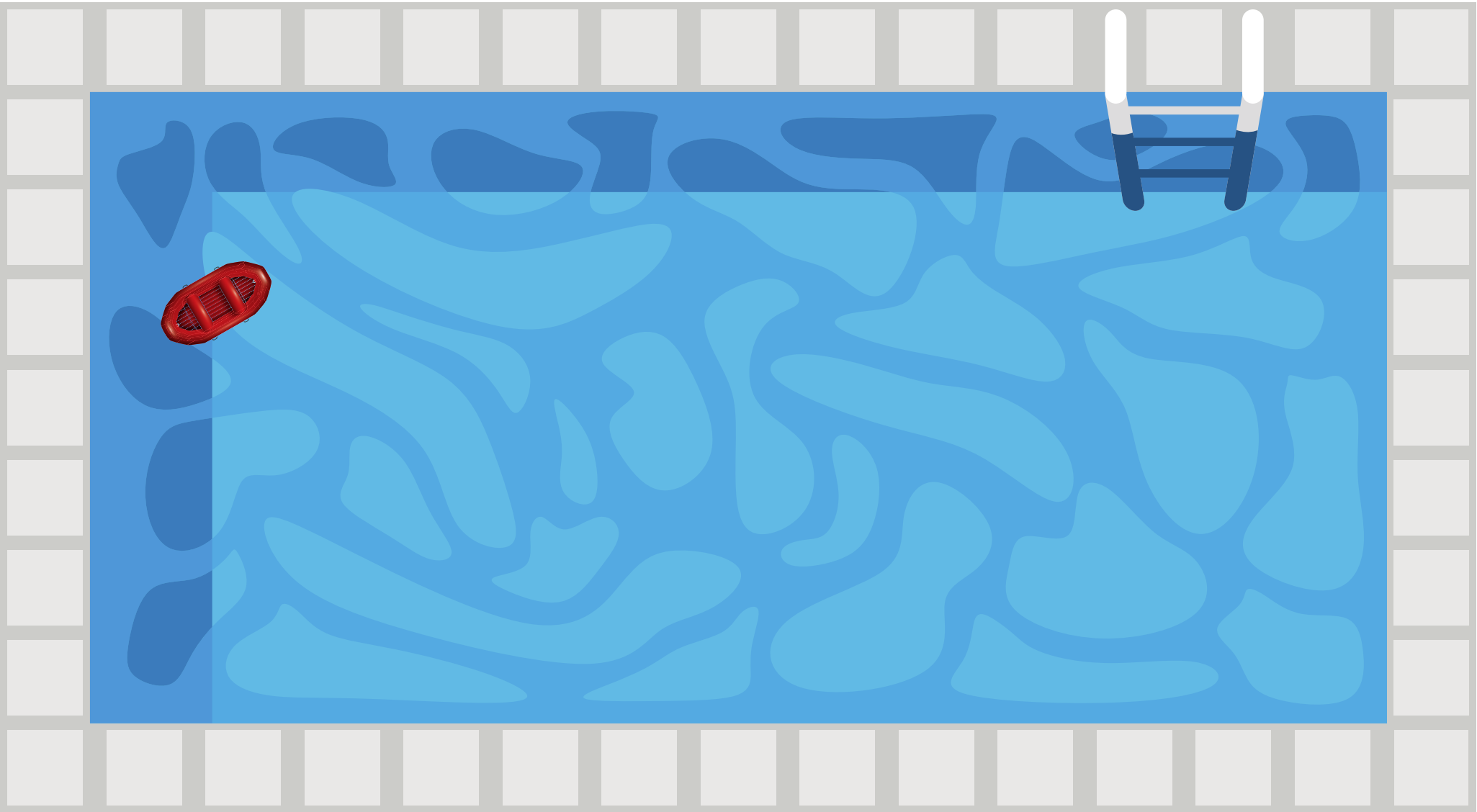
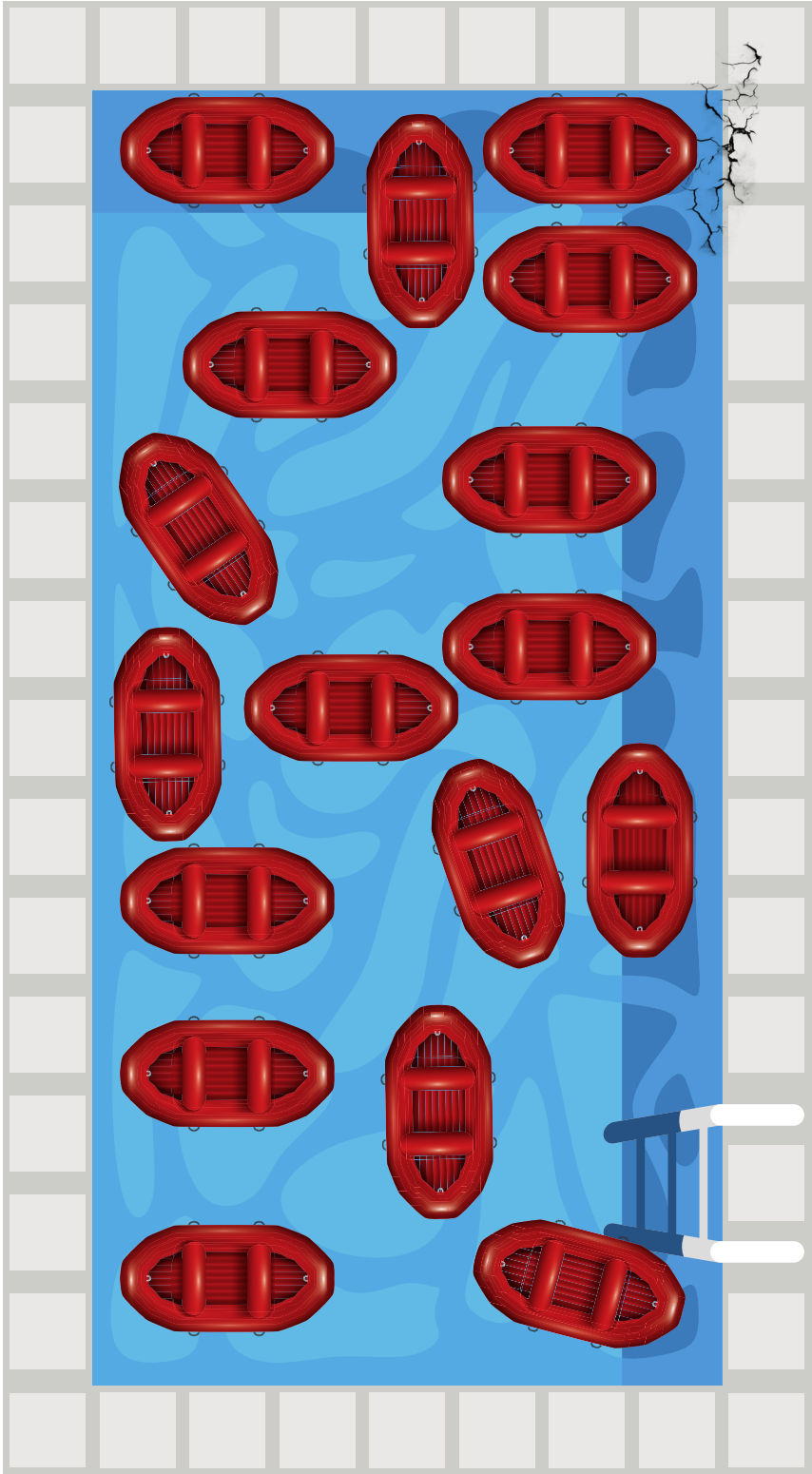


Fig. 1.

"Lake Zurich" (**60047**), 34.79 sq mi,  
population: 41,669

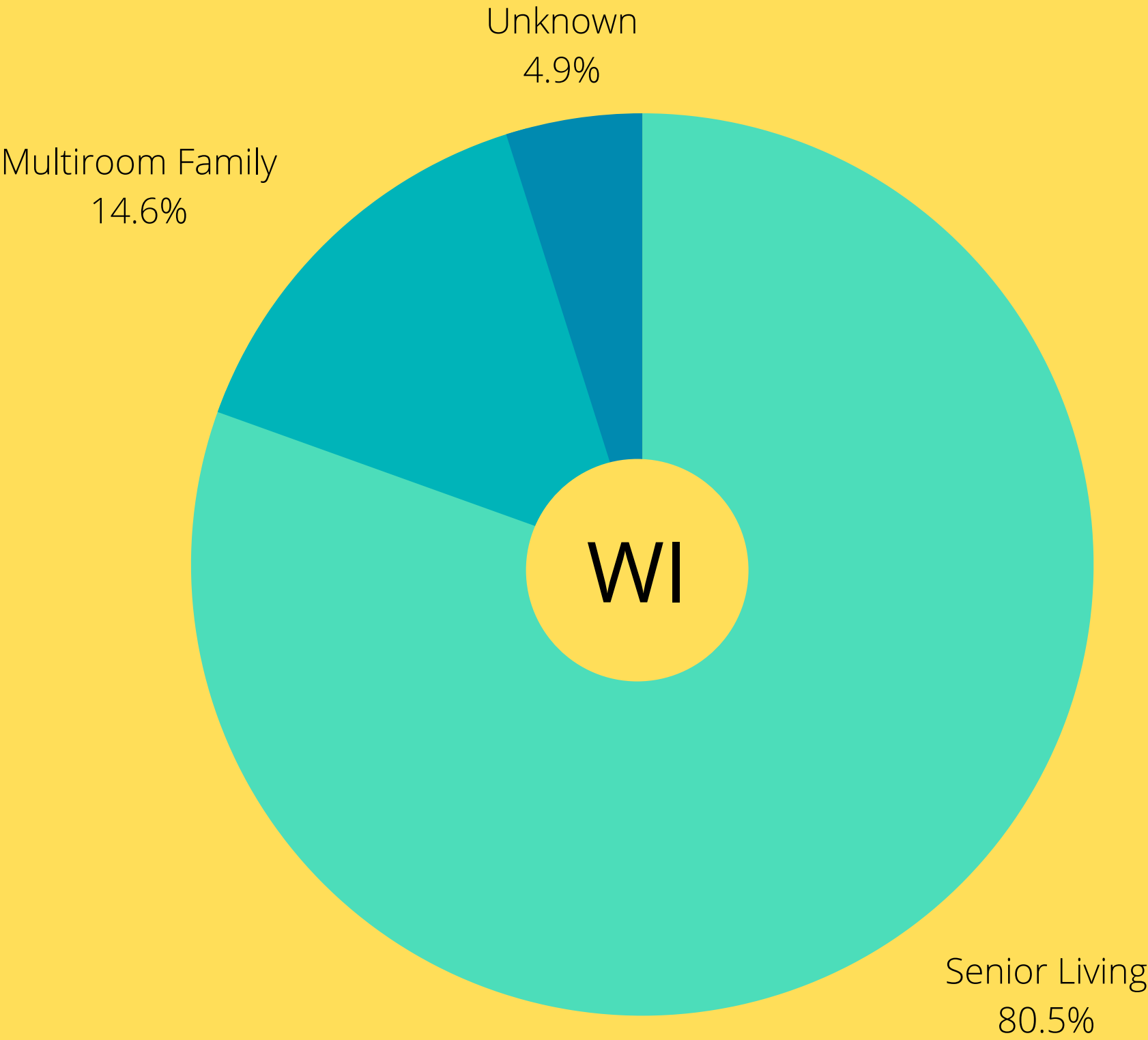
Fig. 2

"Englewood"  
(**60621**),  
3.73 sq mi,  
population:  
35,912



# WHO IS BEING SERVED?

State	White LIHTC tenants	Black LIHTC Tenants	LIHTC IN <10%	LIHTC IN >30%
NH	73.6%	21.7%	40.8%	9.2%
WI	52.1%		36.5%	17.5%
IL	39.7%		14.7%	41.5%
GA	19.4%	75.3%	8.2%	47.4%



# THE THREAT OF LONG-TERM UNAFFORDABILITY

2

26 USC § 42(h)(6) - "Extended Use Period"

**10**

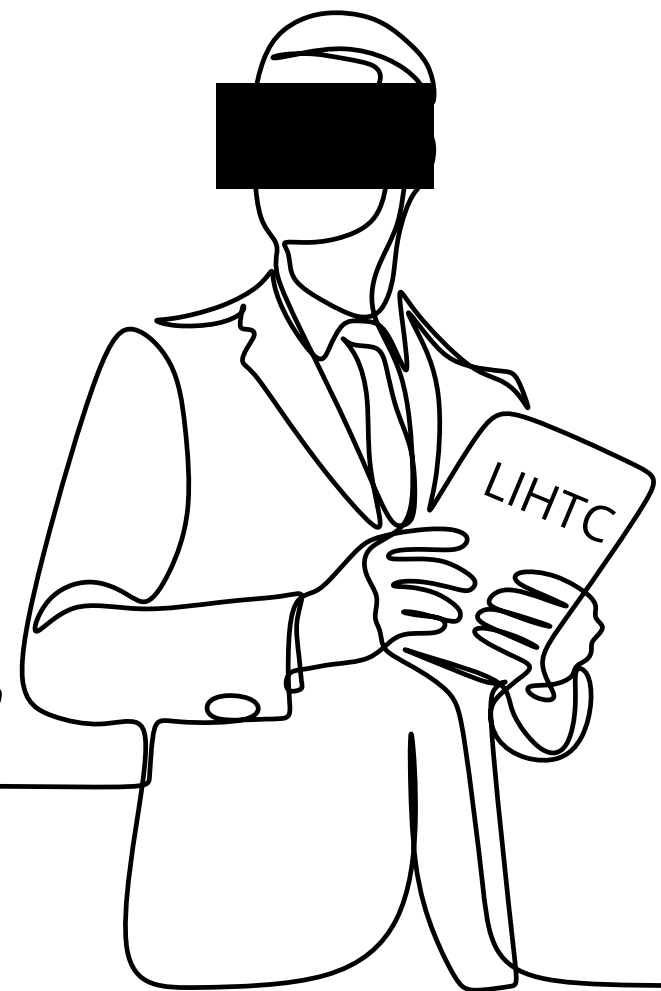
■ Tax Credits Retrieved

**15**

■ End of Compliance Period

**30**

■ End of Extended Use Period



# RISEBORO VS. SUNAMERICA

2

26 U.S.C. § 42(i)(7) - "Right of First Refusal"

*"Struggling residents shouldn't be punished just because a corporation only now sees value in their neighborhood. The Bushwick of today looks differently than it did in the 1980s, much like other neighborhoods that have gone through gentrification. But behind that shiny facade, 24% of residents live in poverty in Bushwick, even as the average rent skyrockets. The majority of the 34 families who reside in Stockholm Manor have lived there since it was built. We must keep Stockholm Manor affordable for existing and future families."*

*-Emily Kurtz, Vice President of Housing at RiseBoro Community Partnership,  
New York Daily News*

# AFFIRMING FAIR HOUSING

3

## *Texas Department of Housing and Community Affairs v. The Inclusive Communities Project*

- Issue: "The disproportionate approval of tax credits for non-elderly developments in minority neighborhoods" (1999-2008).
- Location: District Court of Texas (2012). Ruling: In favor of disparate impact claim; remedial plan to be filed within 60 days.
- Location: Supreme Court of the United States (2015). Ruling: "Disparate-impact claims are cognizable under the Fair Housing Act."
- 24 CFR § 100.500 - "Discriminatory Effect Prohibited" (2017)

24 CFR § 100.500

(b)(3) That there is a robust causal link between the challenged policy or practice and the adverse effect on members of a protected class, meaning that the specific policy or practice is the direct cause of the discriminatory effect



26 USC § 42(m)(1)



Poverty & Race Research Action Council Report (2013)

"Placing LIHTC projects in qualified census tracts risks exacerbating concentrations of poverty... Although the Department of the Treasury and the Internal Revenue Service (the Service) have not issued guidance defining the term **"concerted community revitalization plan,"** the preference fails to apply unless, not later than the allocation, **a plan exists that contains more components than the LIHTC project itself."**

-From IRS Notice 2016-77

State	TX	IL	NY	WI
Revitalization Plan?	No	Yes	No	No

# PARTING THOUGHTS (FOR NOW)

1

## **[De]Concentrating Poverty and [Disrupting] Segregation**

- IRS - issue a notice that clarifies "[giving] preference" in 26 USC § 42(m)(1)
- Incentivize LIHTC (multifamily) developments in areas of opportunity by modifying QAP criteria
- Disclose tenant demographics for individual LIHTC properties
- Use LIHTC to foster home ownership

2

## **[Minimizing] The Threat of Long-Term Unaffordability**

- Minimum set-aside for recapitalization in areas of opportunity
- Ongoing monitoring and reporting; watch dog agencies
- Amending Section 42 to clarify the "right of first refusal" provision

3

## **[Re]Affirming Fair Housing and Community Revitalization**

- IRS - issue a notice that clarifies the standards for a "concerted community revitalization plan"
- Scrutinize applications for new LIHTC developments in high poverty areas (QCTs)
- Subsidize worthwhile, genuine community revitalization efforts

**People  
should  
have  
options.**



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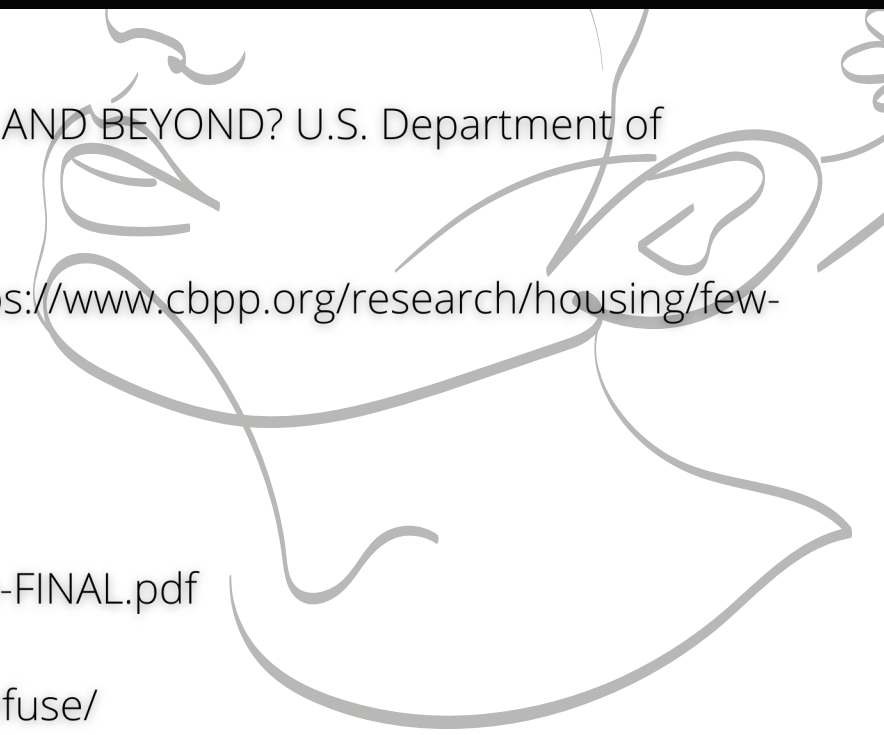
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