

2023  
BOSTON

Fair Housing Forum



# Speakers

- **Discussion Leader**  
**Elmer Moore, Jr.**, Chief Executive Officer | Wisconsin Housing and Economic Development Authority
- **Philip Tegeler**, President/Executive Director | Poverty & Race Research Action Council (PRRAC)
- **Jacy Gaige**, Director, Compliance and Disability Rights Division, Office of Fair Housing and Equal Opportunity | U.S. Department of Housing and Urban Development
- **Tom Hospod**, Housing Development Manager | The Kelsey



**BUILDING OPPORTUNITY III:  
Affirmatively furthering fair housing in  
the Low Income Housing Tax Credit  
program**

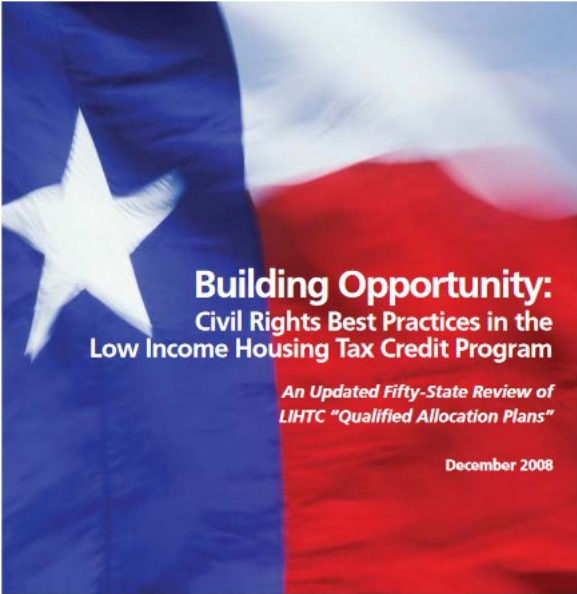
**PRRAC**

*Poverty & Race  
Research Action Council*



# Tracking AFFH in QAPs

2008



**Building Opportunity:**  
Civil Rights Best Practices in the  
Low Income Housing Tax Credit Program

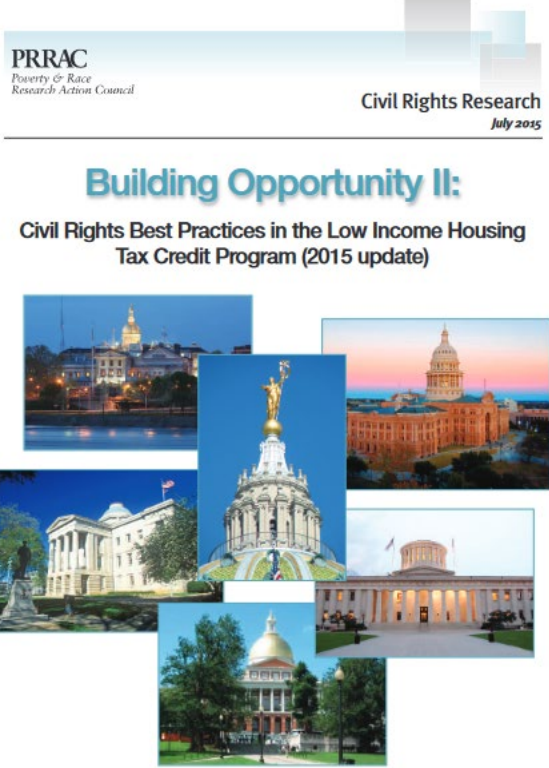
*An Updated Fifty-State Review of  
LIHTC "Qualified Allocation Plans"*

December 2008

**POVERTY & RACE RESEARCH ACTION COUNCIL  
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW**

*Prepared by:*  
Sarah Bookbinder • Alanna Buchanan • Tamica Daniel  
Jonathan Hooks • Shayla Parker • Philip Tegeler

2015



**PRRAC**  
Poverty & Race  
Research Action Council

Civil Rights Research  
July 2015

**Building Opportunity II:**  
Civil Rights Best Practices in the Low Income Housing  
Tax Credit Program (2015 update)

*Janelle Taylor, Robert Lindsey, and Philip Tegeler*

2023



**PRRAC**  
Poverty & Race  
Research Action Council

Civil Rights Research  
October 2023

**Building Opportunity III:**  
Affirmatively furthering fair housing in the  
Low Income Housing Tax Credit program

*Janelle Taylor, Robert Lindsey, and Philip Tegeler*

# Overview of 2023 LIHTC reports

1. Local contribution and approval requirements and incentives
2. Opportunity siting incentives and setasides
3. Tenant selection and affirmative marketing
4. Concerted Community Revitalization Plans
5. Enhanced tenant protections and other social housing provisions

# Local contribution and approval

## Dramatic decrease in states permitting “local vetoes”

Figure 1: Number of State QAPs with threshold local contribution and/or approval requirements

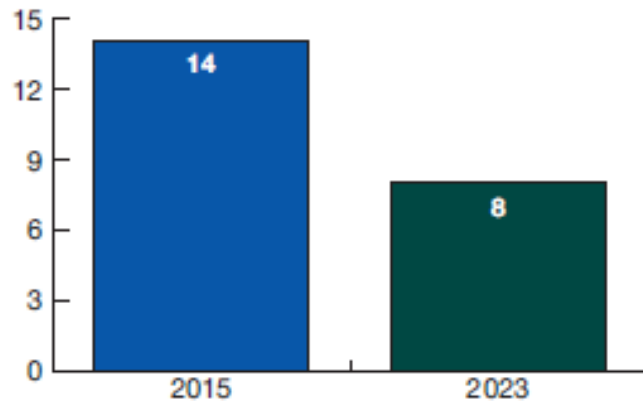
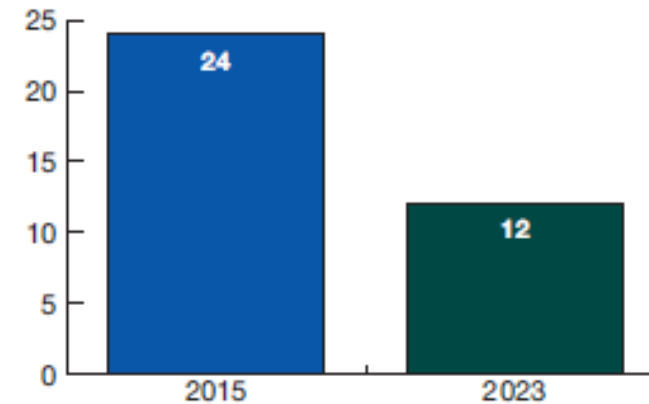
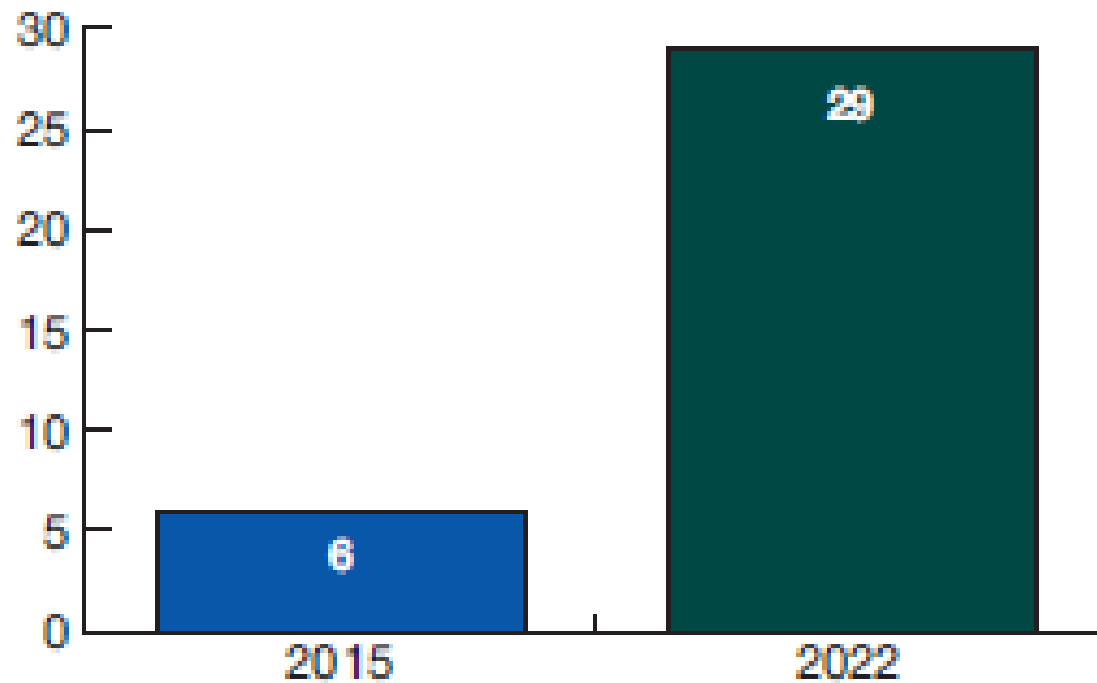


Figure 2: Number of State QAPs allocating points for local contribution and/or approval



# Affirmative siting incentives and requirements

Figure 3: Incentives to site in high opportunity areas



# Affirmative siting incentives and requirements

## ***Encouraging housing for families with children in high opportunity areas***

Communities of Opportunity. 16 points will be awarded to family projects with reasonable access to jobs, quality schools, and other economic and social benefits, as demonstrated by meeting at least 1 of the following 2 criteria (Maryland 2022 Multifamily Rental Financing Program Guide)

## ***High Opportunity Area Set-Asides***

“Housing Opportunity Projects’ are a set aside category. Housing opportunity projects shall mean family projects in an area of opportunity linked to schools that meet or exceed minimum performance standards and that meet or exceed other measures of opportunity, including, but not limited to, the rate of poverty, as may be set forth in a request for proposals.” (NY QAP 2021-22)



# Tenant selection and affirmative marketing

Some notable provisions –

- Outreach/marketing to PHAs (families on PHA waitlist and families with Housing Choice Vouchers)
- Marketing to applicants with disabilities, applicants with limited English proficiency
- Affirmative Fair Housing Marketing Plans – best practices in NY and MO
- Enforcement of LIHTC prohibition of discrimination against families with HCVs – good example in WY

# Concerted community revitalization plans

## 26 USC § 42(m)(1)(B)(ii)(III):

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....*

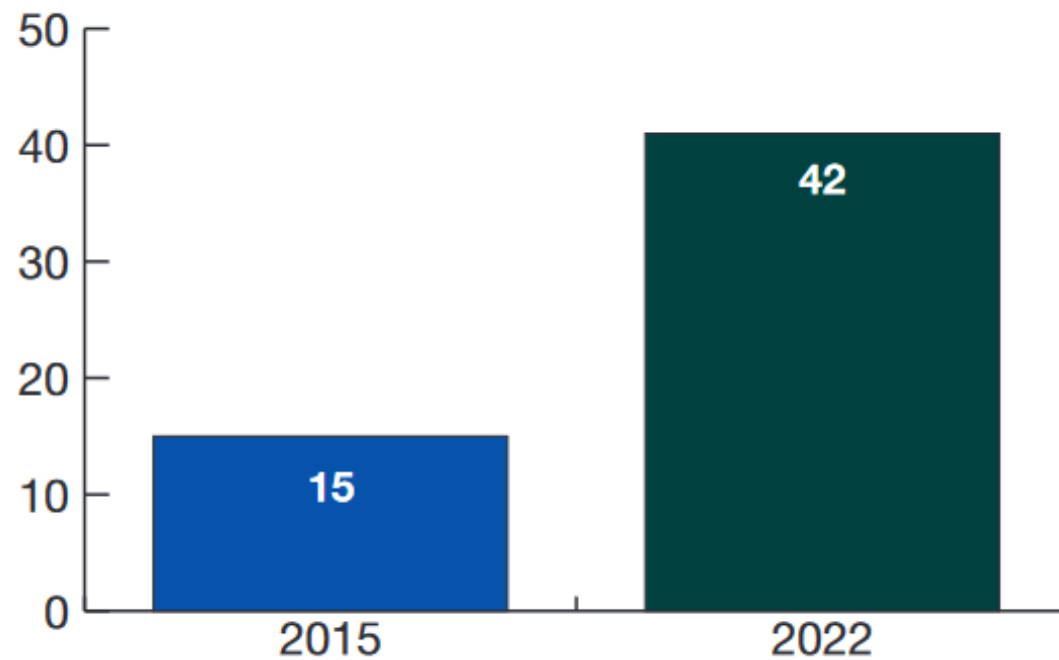
(III) projects which are located in qualified census tracts [ ] *and the development of which contributes to a concerted community revitalization plan*

# Concerted community revitalization plans

- Revenue Ruling 2016-77: “the preference fails to apply unless... a plan exists that contains more components than the LIHTC project itself.”
- National Council of State Housing Agencies’ Recommended Practices in Housing Credit Administration (2017)
- Affordable Housing Credit Improvement Act of 2021 (Cantwell-Hatch)
- Affordable Housing Credit Improvement Act of 2023

# Concerted community revitalization plans

Figure 4: Specific direction on content for concerted community revitalization plans



## Coming Soon

### *Social Housing Goals in State Housing Plans—A 50-State Survey*



- Incentives for long-term affordability above basic federal requirements
- Non-profit ownership or management of housing (above the minimum LIHTC requirements)
- Resident or community representation or oversight
- Tenant cooperative models/Community land trusts/other provisions promoting community acquisition of rental housing
- Support for tenant organizing and/or engagement
- Rent increase protections
- Protection from displacement of residents



**For more information**

<http://www.prrac.org/pdf/BuildingOpportunityIII.pdf>

<https://www.prrac.org/fair-housing/the-low-income-housing-tax-credit/>

[ptegeler@prrac.org](mailto:ptegeler@prrac.org)

# 2023 BOSTON

## Fair Housing in Practice

Jacy Gaige

Director of Compliance and Disability Rights

HUD, FHEO



# Fair Housing In Practice

- Project Eligibility Rules and Descriptions
- Unit Occupancy Standards
- Marketing and Outreach (Content and Practice)
- Application (Content and Process)
- Tenant Screening (Criminal Records, Credit, *etc.*)

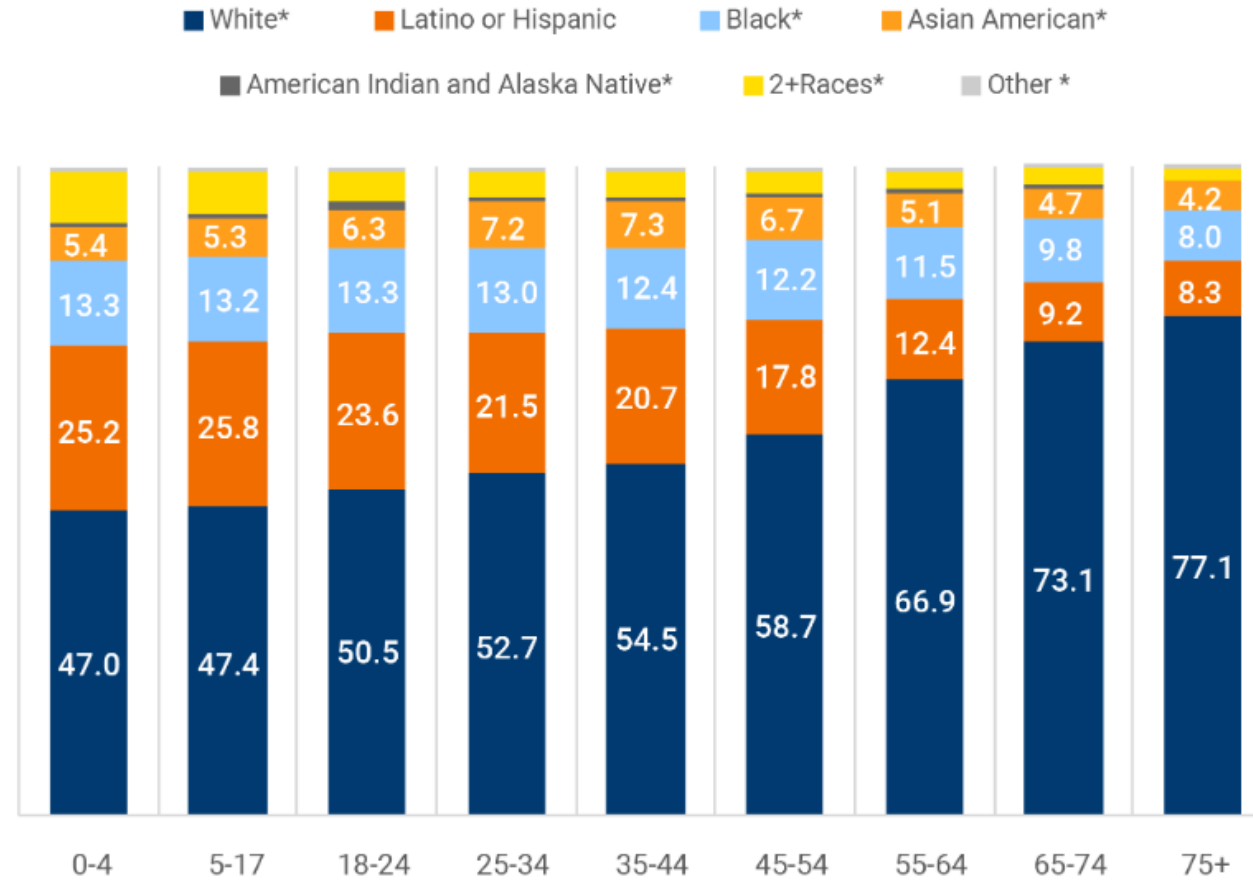
# Project Eligibility Rules and Descriptions

- E.g., Elderly Preferences or Restrictions
  - Legal authority
  - Elderly *households* (including children)
  - Persons with disabilities
- Marketing and application content/process



## Race-ethnic population shares by age

2020



\*Non-Hispanic members of race

**Source:** Willam H. Frey analysis of the 2020 Census Demographic and Housing Characteristics File released May 25, 2023



# Unit Occupancy Standards

- Case Law and HUD guidance
  - The LIHTC maximum rent calculation (based on 1 person per studio and 1.5 people per bedroom)  $\neq$  occupancy standard.
  - HUD program bedroom size determinations  $\neq$  occupancy standard.
- Marketing and Application Content/Process
- Practice consideration:
  - “no more restrictive than local code”

# Criminal Records Screening

“A housing provider must...be able to *prove through reliable evidence* that its policy or practice of making housing decisions based on criminal history *actually assists in protecting resident safety and/or property.*”

“A housing provider that imposes *a blanket prohibition on any person with any conviction record* – no matter when the conviction occurred, what the underlying conduct entailed, or what the convicted person has done since then –*will be unable to meet this burden.*”

“A policy or practice that fails to consider the *nature, severity, and recency* of criminal conduct is *unlikely to be proven necessary* to serve a “substantial, legitimate, nondiscriminatory interest....”

“The fact that an individual was arrested is not grounds to deny a housing opportunity...”

# Criminal Records Screening

## **Multifamily Housing**

- Multifamily Occupancy Guidebook (4350.3)
- 2022 FHEO Guidance on Compliance w/ Title VI in Marketing & Application Processing

## **Public Housing Programs**

- Housing Choice Voucher Program Guidebook/Public Housing Occupancy Guidebook
- 2016 PIH FAQs on Excluding Use of Arrest Records in Housing Decisions
- 2015 PIH Notice - Guidance for PHAs & Owners on the Use of Arrest Records in Hsg. Decisions

## **All Housing**

- OGC Guidance on the Application of Fair Housing Act Standards to the Use of Criminal Records....
- 2022 FHEO Implementation memo re: GC Guidance on Criminal Records
- HUD/DOJ Joint Statement on Reasonable Accommodations – Direct Threat Analysis

# Criminal Records Screening

## Points of Exclusion

- Advertising Materials
- Application Materials
- Screening Policies
- Screening Practices
- “False” statements
- Denial Notifications
- Exclusion Agreements
- Rescreening
- Ban Lists
- Termination Processes



# 2023 BOSTON

## Fair Housing - Disability Inclusion

Tom Hospod: *Housing  
Development Manager -  
The Kelsey*



**We pioneer disability-  
forward housing  
solutions that open  
doors to homes and  
opportunities for  
everyone**



People with disabilities reliant

on SSI would need to spend 131% of their entire income to afford basic housing.



**61 million Americans with disabilities** don't have their basic housing needs met.

The barriers include:



## Access

Less than 6% of the housing market is accessible to people with disabilities.



## Supply

Only 12% of adults with disabilities rent or own their own homes and people with disabilities are 4x more likely to experience **Discrimination** in housing.



Over 55% of housing discrimination is based on disability, more than any other type of housing discrimination.

# An Ideal Qualified Allocation Plan (QAP) will...

1. Incentivize Resident Services
1. Incentivize Disability-Forward Design
1. Contain Set-Asides Favorable to Residents with Disabilities

# Incentivize Resident Services



## Community

with connections, recreation, spirituality, joy, meaningful work, and relationships



## Housing

that is accessible, affordable across a range of incomes, and meets personal preferences



## Supports & Services

including medical services, in home supports, and therapies designed to meet individualized needs




# Incentivize Disability-Forward Design

The **Kelsey's Inclusive Design Standards** include **300 Elements**. Elements reflect design choices, building features, development strategies, or operational policies that support accessibility and inclusion. For example, the District of Columbia has implemented the Design Standards into its QAP.

**1.1 Disability Representation on the Project Team**

**Team**

<p><b>Impact Areas</b></p> <ul style="list-style-type: none"> <li>Mobility and Access</li> <li>Hearing and Vision</li> <li>Health and Wellness</li> <li>Cognitive Access</li> <li>Support Needs</li> </ul> <p><b>Additional Benefits</b></p> <ul style="list-style-type: none"> <li>Affordability</li> <li>Social Equity</li> <li>Environmental Sustainability</li> <li>Safety</li> <li>Beauty and Better Design</li> </ul> <p><b>Sources</b></p> <p>The Kelsey</p>	<p><b>1</b> Point Value</p> <p>Level 1 - People with disabilities are part of advisory groups / focus groups shaping the project with documented ability to shape and define the project. <b>ESSENTIAL ELEMENT</b> ✓</p> <ul style="list-style-type: none"> <li>Advisory or focus groups are people with lived experience assembled by the project team</li> </ul> <p><b>2</b> Point Value</p> <p>Level 2 - People with disabilities are paid consultants on the project team.</p> <p><b>3</b> Point Value</p> <p>Level 3 - People with disabilities are full-time members of the project team and/or developer/owner team.</p>
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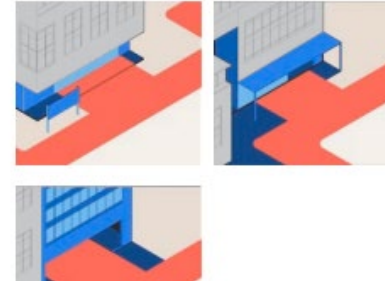
**4.2 Vertical Circulation Dual Handrails**

<p><b>Impact Areas</b></p> <ul style="list-style-type: none"> <li>Mobility and Access</li> <li>Hearing and Vision</li> <li>Health and Wellness</li> <li>Cognitive Access</li> <li>Support Needs</li> </ul> <p><b>Additional Benefits</b></p> <ul style="list-style-type: none"> <li>Affordability</li> <li>Social Equity</li> <li>Environmental Sustainability</li> <li>Safety</li> <li>Beauty and Better Design</li> </ul> <p><b>Sources</b></p> <p>Mikiten Architecture</p>	<p><b>1</b> Point Value</p> <p>Stairs and ramps have high and low handrails.</p> <ul style="list-style-type: none"> <li>One handrail at 36" and another at 30" above the nosing.</li> <li>Provides safety for children and shorter adults.</li> <li>For ramps, someone in a wheelchair can slow their descent or pull themselves up the ramp more easily with better leverage than pushing a wheelchair wheel.</li> </ul>
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**2.3 Building Approach and Entry Arrival Wayfinding**

<p><b>Impact Areas</b></p> <ul style="list-style-type: none"> <li>Mobility and Access</li> <li>Hearing and Vision</li> <li>Health and Wellness</li> <li>Cognitive Access</li> <li>Support Needs</li> </ul> <p><b>Additional Benefits</b></p> <ul style="list-style-type: none"> <li>Affordability</li> <li>Social Equity</li> <li>Environmental Sustainability</li> <li>Safety</li> <li>Beauty and Better Design</li> </ul> <p><b>Sources</b></p> <p>AUD</p>	<p><b>1</b> Point Value</p> <p><b>Architectural Landmarks.</b> <b>ESSENTIAL ELEMENT</b> ✓</p> <ul style="list-style-type: none"> <li>Architectural features distinguish all primary entrances and exits from other entrances and exits (e.g., prominent signs, graphics, architectural features, landmarks, etc.).</li> <li>Landmark elements have unique lighting to assist in locating them.</li> <li>They are visible along the primary approach route of motor vehicles, pedestrians, and cyclists.</li> </ul>
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# Set-Asides within QAPs

For “accessible” units AND people who need supportive services through Section 811 Vouchers.

*Examples:*

1. California - goes beyond Section 504 requirements -15% mobility and 10% sensory
  1. Indiana - 20% adaptable, 10% mobility, and 2% sensory
- Studies have shown that incorporating accessibility from the outset is **cost-neutral**
  - Set-Asides will encourage developers to provide disability-forward housing and reduce discrimination

