The Visitable Inclusive Tax Credits for Accessible Living (VITAL) Act

Senate Bill 1377 / House BIll 3963

What is the VITAL Act?

The United States housing market has failed to create homes that every person, regardless of disability, can access and afford. The VITAL Act would increase the overall funding for the Low-Income Housing Tax Credits (LIHTC) for both 4 and 9 percent credits while encouraging the development of accessible housing.

Approximately 1 in 7 (37 million) US adults with mobility-related disabilities[1] only have access to less than five percent of the nation's housing stock.[2] For wheelchair users, less than one percent of housing is accessible.[3] For people with sensory and other disabilities, the shortage is equal or greater. By 2030, one in five Americans will be over 65, and currently, two in five adults over 65 have a disability.[4] As people age, they also will need structurally and mechanically safe housing accessible.

People with disabilities and older adults disproportionately need affordable housing. In the United States, approximately 4.8 million non-institutionalized adults with disabilities who depend on federal monthly Supplemental Security Income (SSI) are priced out of every rental housing market.[5] People with disabilities are twice as likely to live in poverty, and poverty is even higher for Black and Brown disabled people.[6] A lack of affordable and accessible housing pushes people with disabilities into institutional settings, homelessness, and/or housing instability.[7]

The Low Income Housing Tax Credit (LIHTC), the nation's primary driver of affordable housing, does not have any in-unit requirements for mobility or sensory access. This contributes to the severe shortage of accessible,

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[1] Disability Impacts All of Us Infographic | CDC
[2] Assessing the Accessibility of America's Housing Stock for Physically Disabled Persons | HUD USER
[3] Assessing the Accessibility of America's Housing Stock for Physically Disabled Persons | HUD USER
[4] By 2030, All Baby Boomers Will Be Age 65 or Older
[5] Priced Out - TAC
[6] 7 Facts About the Economic Crisis Facing People with Disabilities in the United States | The Century Foundation
[7] Disability-Forward Policy Recommendations To Advance Accessible and Affordable Housing for All - Center for American Progress

affordable housing for people with disabilities. LIHTC is a federal program providing tax credits to developers who build new housing for low-income renters. The LIHTC program can be used to increase the number of accessible homes and to address the affordability of those homes so that more people with disabilities and older adults can live in the communities they choose.

What Will The VITAL Act Do?
The bill would increase new accessible, affordable housing by adding funding, requirements, and incentives. This would specifically:

- Increase the overall funding for LIHTC for both 4 and 9 percent credits.
- Increase the funding available to developers who build units:
  - designed for people with disabilities
  - located in places that connect people to their communities and do not isolate them, with high neighborhood transit access, walkability, or roll-ability
- Require that at least 40 percent of their LIHTC units states construct are disability adaptable/accessible, or at least 20% if they are also located in walkable/rollable areas.
- Allocate each state housing finance authority $150,000 to establish LIHTC resource centers to support new and nonprofit developers.
- Create a cross-divisional housing national advisory council to provide general recommendations on national LIHTC trends.

Endorsements
The Kelsey, LeadingAge, Pathways to Housing PA, TriageCancer, National Low Income Housing Coalition, Liberty Housing Development Cooperation, National Council on Independent Living, National Disability Rights Network, Autistic Self Advocacy Network, The Arc of the United States, Disability Rights Education & Defense Fund, Justice in Aging, National Housing Law Project, National Council on Aging, National Association of Councils on Developmental Disabilities, Association of Assistive Technology Act Programs, Muscular Dystrophy Association, National NeighborWorks Association, Paralyzed Veterans of America, TASH, ANCOR, Bazelon Center for Mental Health Law, The Amputee Coalition, Colorado Cross-Disability Coalition, National Association of the Deaf,

American Walks, Community Solutions, American Foundation of the Blind, Christopher & Dana Reeve Foundation, Caring Across Generations, YIMBY Action, Center for Law and Social Policy, and The American Council of the Blind.

Frequently Asked Questions

- **What is the Low Income Housing Tax Credit program?**

  The Low-Income Housing Tax Credit (LIHTC) program is an essential resource for creating affordable housing in the United States today. Created by the Tax Reform Act of 1986, the LIHTC program gives state and local LIHTC-allocating agencies the equivalent of approximately $8 billion in annual budget authority to issue tax credits for new and rehabilitated rental housing for lower-income people.

- **How will the passage of The VITAL Act impact people with disabilities and older adults?**
  Passing The VITAL Act would have a critical impact on the lives of people with disabilities, older adults, and their family members because:

  - There will be more affordable housing options in neighborhoods across the country because more tax credits will be available to pay for affordable housing. Right now, housing that is ready to be built or rehabbed is stalled because there aren't enough tax credits. According to a 2021 estimate, if more tax credits would become available, approximately 1.94 million more affordable rental homes would be built or rehabbed over ten years.
  - There will be more *accessible*, affordable housing options. Up to 970,000 affordable homes would become accessible to people with mobility and sensory disabilities.
  - There will be more affordable housing options in neighborhoods where people with disabilities and older adults can age in place, freely visit their friends and family, and close access to transit to make community services and amenities more accessible.

- It would create a more access-informed affordable housing field that will impact how disabled people and older adults are viewed by the industry, which could decrease the high rates of housing discrimination currently faced by disabled people.

- **How is The VITAL Act defining "units designed for people with disabilities"?**
The VITAL Act defines units under the Uniform Federal Accessibility Standards (UFAS), as either "accessible" to people with disabilities or "adaptable" (able to be made accessible) for people with disabilities if the need arises. The bill specifically refers to the UFAS adaptable definition, which will make sure units will be accessible to a more diverse range of bodies and needs. Adaptable units are easily made accessible for mobility and sensory disabilities,creating greater ease for the tenant and landlord when reasonable accommodations and/or modifications are made.

- **How is The VITAL Act defining units that are walkable/rollable?**
Walkable and rollable units are defined as those that are built in, or adjacent to, a census block group designated as above average or better for walkability by the Environmental Protection Agency (EPA). In other words, walkable or rollable units are defined as those built in places that increase the probability of people walking/moving/rolling as a mode of transportation to where they need to go. The EPA uses measures such as street intersection density, proximity to transit stops, and a diverse employment mix. For more information: National Walkability Index Methodology and User Guide.

- **What is the accessibility requirement in The VITAL Act?**
Over a 3-year period, at least 40 percent of the LIHTC units in each state must meet the UFAS Adaptability standard. If a project meets both the Adaptability and Walkability standards, they are counted twice, reducing the state's requirement from 40 percent to only 20 percent. In other words, over 3 years, the state must require that 20-40% of tax credit-funded housing be accessible and walk/rollable.

- **Why do we need more requirements when all Low-Income Housing Tax Credit funded projects are required to follow the Fair Housing Act (FHA)?**
  The FHA may provide critical protections, including prohibiting housing providers from discriminating against applicants or residents because of disability; making it unlawful to refuse "to make reasonable accommodations/modifications in rules, policies, practices, or services, when such accommodation may be necessary to afford such person equal opportunity to use and enjoy a dwelling." Still, unfortunately, there are common loopholes and exceptions. the FHA design/construction requirements *don't* apply to
    - Town houses
    - Duplexes or triplexes
    - Multi-family buildings without elevators (excluding the ground floor)
    - Alterations in existing buildings
    - Changes in occupancies in existing buildings

- **What are the differences between what is required under FHA design requirements and UFAS?**
  Some of the differences include:
    - Doorways
        - **FHA:** Minimum width of 32 inches
        - **UFAS:** Minimum width of 36 inches
    - Kitchens
        - **FHA:** 30-inch clearance in front of all kitchen appliances and fixtures
        - **UFAS:** 40 inches clearance in front of all kitchen appliances and fixtures
    - Bathrooms
        - **FHA:** 30-inch by 48-inch clear floor space in front of the toilet
        - **UFAS:** 60-inch clear floor space (turning radius); backing of grab bars
    - Electrical Outlets and Switches
        - **FHA:** No requirement

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    - **UFAS:** Installed no more than 44 inches above the floor
- Countertops and Sinks
    - **FHA:** One kitchen countertop to be no more than 36 inches above the floor
    - **UFAS:** Requires all counter surfaces to be no higher than 34 inches above the floor
- Entrance and Exit
    - **FHA:** At least one accessible entrance to the unit, with no steps or other barriers
    - **UFAS:** Requires that all entrances be accessible, with a minimum clear width of 32 inches
- Elevators
    - **FHA:** only requires elevator access to the first floor with dwelling units
    - **UFAS:** requires 1 passenger elevator provided to each story
- Auxiliary alarms
    - **FHA:** None
    - **UFAS:** Requires emergency visual alarms
- Tactile Warnings On Doors To Hazardous Areas
    - **FHA:** None
    - **UFAS:** Required

- **What about disabilities that aren't mobility or sensory, does this bill include creating affordable housing that will be accessible to people with other disabilities?**
  Adding UFAS accessibility standards to LIHTC only includes requirements for mobility and sensory disabilities. But this is simply the minimum of what developers should do to be accessible. By starting with these access needs, a baseline is created of what should be considered and creates a foundation for developments to consider other access needs. Additionally, some design choices made specifically for those with mobility and sensory disabilities can and will have a broader impact on everyone. For example, parents with small children or people who become temporarily injured will

benefit from the mobility features. Also, people with disabilities and older adults can visit their friends and family.

In addition, the EPA walkability standards will create more affordable housing opportunities in areas where people with disabilities and older adults will have more ease getting around their neighborhoods, whether that be accessing transit and community-based services and supports. Proximity to services and support is critical for people with *all* types of disabilities to live and thrive in their homes.

- **How can we be sure that LIHTC projects will be more accessible when one of the accessibility measures is an incentive, not a requirement?**
  Tax credits are very competitive, so developers will do whatever they can to be the best applicant. Therefore, every incentive that a developer can take will be taken. In other words, developers follow the money. If more money is tied to increasing accessibility and/or walk/rollability, then the developers will implement the accessibility and/or walk/rollability.

- **Alone, LIHTC cannot fund units with the deepest affordability level, yet disabled people and older adults often need deeply affordable housing. If this is the case, then why change LIHTC?**
  Yes, LIHTC units without additional subsidies are still not affordable enough to many extremely low-income people with disabilities and older adults. Yet, with LIHTC being the largest driver of affordable housing and having no requirements around mobility and sensory access, strengthening LIHTC in the ways laid out in the bill would be a tremendous advancement in increasing the future stock of accessible housing for people with disabilities, older adults and their families. It is one of the many important policy changes needed to address the abhorrent deficit of affordable, accessible, and inclusive housing.

  While we need to continue advocating for more rental assistance, including Housing Choice Vouchers, those who do have vouchers are often unable to use them because of the inability to find an affordable-enough access unit.

Strengthening LIHTC will increase the housing stock available for disabled and senior voucher holders.

- **How will the passage of The VITAL Act impact affordable housing developers?**
  Passing The VITAL Act will impact affordable housing developers in the following ways:
  - There will be more tax credits available; therefore, affordable housing developers will be able to complete projects that may be stalled and/or will be able to develop or rehabilitate more affordable housing.
  - Affordable housing developers will have more ways to be competitive to receive 4 percent credits.
  - There will be new technical assistance made available to support the implementation of the new accessibility standards.
  - Building in accessibility from the beginning will save costs and mitigate the risks associated with rehabilitation or additional design work.
  - Developers will increase their markets for future tenants and will support longer tenancy for older residents and those with disabilities.

- **What credit does VITAL apply to?**
  VITAL Act applies to both 4 and 9 percent tax credits.

- **How will the passage of The VITAL Act impact State and local LIHTC-allocating agencies?**
  LIHTC-allocating agencies will have more tax credits for developers in their states and/or regions. Each state housing finance authority will be awarded $150,000 to establish a LITHC resource center to support new and nonprofit developers.

- **Beyond the increase of affordable, accessible units that would be built, what are the benefits of adding a the UFAS accessibility incentive and requirement to LIHTC?**
  Not planning for accessibility upfront can lead to unscheduled maintenance costs and a big hit to projects with limited operating budgets. Reasonable modifications can be expensive to add after project completion. They may not be done well as a retrofit, leading to things like water damage for bathroom modifications and compounding costs. Designing for all kinds of disabilities and bodies from the start can help lower these costs down the road. Property management or other on-site staff may not understand the ins and outs of the Fair Housing Amendments Act (FHAA), Section 504 of the Rehabilitation Act, or state and disability access laws; this can open up the project to unexpected complaints, litigation, and/or settlements. Taking a progressive, federally aligned approach to accessibility helps to ensure a project is built in compliance the first time and stays in compliance during operations.

- **Integrated, inclusive housing is essential when creating a disability-forward housing future. Does LIHTC fund congregate and institutional housing?**

  A majority of LIHTC funded housing is not institutional and not congregate. Without getting too technical, here is our take:

  1. For group homes: Technically, if it's deed restricted, affordable LIHTC could be used, but those don't have the scale that makes sense to bring in a LIHTC investor.
  2. For Institutional Settings like skilled nursing facilities: This would again be difficult to finance with LIHTC, as you would have to separate rent from everything else, which is drastically challenging in these types of settings, therefore, it's very difficult to underwrite.

  That being said, there is a small percentage of institutional settings and group homes that get funded with LIHTC but the impact of strengthening

LIHTC is still worthwhile. This is a reminder that VITAL is one of the many important policy solutions needed to ensure that the US housing market is fully affordable, accessible, integrated and inclusive to all.

- **My state already requires increased accessibility standards for LIHTC-funded projects, so how will this bill impact us?**

  Your state is ahead of the curve compared to the federal government. The nation's two largest states, California and Texas, already require accessibility compliance, but our federal government needs to step up. The VITAL Act would raise the bar for the nation and the other states that have not yet made tax-credit accessibility requirements. Therefore, your state will not be impacted as much by the changing requirements, but you will benefit from the new resources and technical assistance included in the bill. Additionally, for developers and advocates alike, consistency in what's required will save time and money, which is often used in determining what applies to the given project.

- **What will accountability look like to ensure housing developers follow the new standards if passed?**
  The penalty for not abiding by the requirements is that a state's Qualified Allocation Plan would be invalid and they would lose the ability to give out LIHTC credits for the non-compliant year.

- **How does The VITAL Act compare to the Affordable Housing Credit Improvement Act (AHCIA)?**

  The AHCIA is bipartisan legislation that would comprehensively strengthen the Low Income Housing Tax Credit program. Like The VITAL Act, the AHCIA would double the number of tax credits available, among other critical provisions, which you can learn about here. Yet, the AHCIA does not currently mention creating a national standard of accessibility for people with disabilities and older adults. We believe that populations served by the affordable housing industry and the industry itself would benefit greatly from embedding key VITAL provisions into current and future legislation.

- **Why does The VITAL Act use the EPA's Walkability Score to determine what projects are walkable?**

  It is a national, government-produced metric that is updated regularly and divides the country into easy-to-understand classifications on walkability. It demonstrates that many small cities and rural towns have walkable areas as well. Want to see your area's walkability score click here.

Still, got questions? We want to hear from you! Email hunter@thekelsey.org!