



THE HFA INSTITUTE

Strengthening Compliance Policy

Washington, DC | January 10, 2018





RECOMMENDED PRACTICES IN HOUSING CREDIT ADMINISTRATION

Recommended Practices Background

- In 2016, NCSHA's Board of Directors appointed a task force of Housing Finance Agency executive directors to review, revise, and expand NCSHA's existing Recommended Practices in Housing Credit administration.
- These Recommended Practices were developed between 1993 and 2011 and addressed numerous allocation, underwriting, and compliance monitoring responsibilities of the state Housing Credit allocating agencies.
- The task force worked on this project over 18 months, collaborating with all HFA executive directors and their staff.
- NCSHA also sought comments from numerous Housing Credit industry representatives, including national advocacy associations and developer, syndicator, investor, and other stakeholder groups.
- The resulting report significantly strengthens numerous existing practices and includes 13 important new practices that respond to current program challenges and opportunities. **Notable changes are identified in green.**
- NCSHA's Board adopted these Recommended Practices at its December 2017 meeting in Washington, DC.

Housing Credit Recommended Practices

1. Qualified Allocation Plans
2. Allocation and Underwriting of Tax-Exempt Bond Deals
3. Concerted Community Revitalization Plans
4. Reducing Local Barriers to Development
5. State-Designated Basis Boost
6. Application Procedures and Site Visits
7. Development and Management Experience
8. Market Analysis
9. Promoting Choice and Opportunity for Residents
10. Rural Housing Development with the Credit
11. Native American Housing Development with the Credit
12. Using the Credit for Supportive Housing
13. Sustainable Development
14. Ensuring Reasonable Development Costs
15. Developer and Builder Fee Limits
16. Consultant and Professional Fees
17. Verification of Expenditures /IRS Form 8609
18. Certification of Sources and Uses of Funds
19. Operating and Replacement Reserves
20. Operating Expense and Vacancy Rate Projections
21. Debt and Expense Coverage
22. Minimum Rehabilitation Threshold
23. Capital Needs Assessment
24. Appraisals in Acquisition/Rehabilitation Deals
25. Extended Use Agreements
26. Encouraging Preservation with the Housing Credit
27. Qualified Contracts
28. Construction Monitoring
29. Transmittal of Development Information
30. Monitoring Property Restrictions
31. Housing Credit Asset Management
32. Foreclosure Prevention
33. Compliance Manuals
34. Owner and Manager Training
35. Coordination of Monitoring Activities
36. Distributing Income and Rent Limits
37. Utility Allowances
38. Monitoring Fees
39. Tenant File Review Procedures
40. Calculating Anticipated Tenant Income
41. Fair Housing Compliance
42. VAWA Compliance
43. Extended Use Period Compliance
44. Compliance Issues in Resyndication
45. Standardized Compliance Forms and Reporting
46. Agency Staff Training

32. Foreclosure Prevention

Recommendation

- In addition to monitoring continued compliance in the extended use period, Agencies should monitor Housing Credit developments to identify properties in danger of foreclosure.
- If a property faces financial challenges, Agencies should examine and consider restructuring strategies to prevent foreclosure.
- Agencies should adopt policies requiring that restrictive covenants and other long-term use restriction instruments are not automatically terminated upon the execution of a foreclosure or deed in lieu of foreclosure.
- Agencies should establish procedures attendant to a foreclosure (or deed in lieu) of a Housing Credit property requiring all entities initiating foreclosure to provide the Agency with certain information at least 60 days prior to requesting the Agency release the extended use agreement.

32. Foreclosure Prevention

Recommendation (continued)

- Agencies should inform the entity initiating foreclosure that should the Agency determine, based on the information provided, that the foreclosure activity is part of an arrangement to terminate the extended use agreement, the Agency will report its findings to the IRS.
- Agencies should thoroughly examine any foreclosure (or instrument in lieu) to ensure it is not part of an arrangement with the taxpayer the purpose of which is to terminate the extended use period on the development and, should they deem it to be such an arrangement, report their findings to IRS and request that IRS prevent termination of the extended use agreement.
- Agencies should withhold consent for termination of the extended use agreement if the owner does not provide the information outlined above.
- Agencies should consider sanctions against owners that engage in a foreclosure deemed to be part of an arrangement with the taxpayer to terminate the extended use period on the development.

37. Utility Allowances

Recommendation

- Agencies should permit Housing Credit developments to select from all utility allowance options available under IRS regulation; and
- Agencies should specify requirements for application of alternative utility allowances (i.e., Agency estimate, utility company estimate, HUD Utility Schedule Model, or energy consumption model) in both new developments and existing developments that seek a change in utility allowance.

41. Encouraging Fair Housing Compliance

Recommendation

- Agencies should require owners to certify on the annual owner certification any finding of discrimination under the Fair Housing Act.
- Agencies should refer any fair housing complaints to the appropriate state fair housing enforcement agency and to HUD.
- To further encourage fair housing compliance, Agencies should implement monitoring procedures to ensure that Housing Credit developments comply with federal nondiscrimination standards for all protected classes.
- Agencies should require owners and property managers to attend fair housing training prior to leasing the property and on a regular basis throughout the compliance and extended use periods.
- Agencies should encourage the use of affirmative fair housing marketing plans at Housing Credit developments.

42. Violence Against Women Act (VAWA) Compliance

Recommendation

- Agencies should reference victims of domestic violence, dating violence, sexual assault, or stalking under the QAP selection criterion for tenant populations with special housing needs.
- Agencies should clarify that a domestic violence incident does not constitute good cause for eviction if the tenant otherwise meets occupancy rules.
- Agencies should notify development owners and property managers about victims' rights under VAWA, including providing tenant notice, establishing an emergency transfer plan, and formalizing transfer request requirements.
- Agencies should amend extended use agreements to explicitly reference VAWA requirements.
- Agencies should modify compliance monitoring procedures to identify VAWA noncompliance.

42. Violence Against Women Act (VAWA) Compliance

Recommendation (continued)

- Agencies should require owners of Housing Credit developments to implement the following practices to ensure VAWA compliance:
 1. Prohibit denial of assistance and/or eviction from housing on the basis that an applicant or resident is a victim of domestic violence, dating violence, sexual assault, or stalking, if they otherwise qualify for admission.
 2. Provide notices similar to HUD-5380 (*Notice of Occupancy Rights Under VAWA*) and HUD-5382 (*Certification of Domestic Violence*) to all tenants.
 3. Utilize a lease addendum to inform tenants they are in a Housing Credit unit and that they are protected by VAWA.
 4. Allow bifurcation of tenant leases to evict or terminate assistance of the perpetrator and continue housing assistance for the victim.
 5. Develop policies on acceptable unit transfers, referencing guidance from HUD-5381 (*Emergency Transfer Plan*) and HUD-5383 (*Transfer Request*).
 6. Train property management staff on VAWA requirements.

43. Compliance in the Extended Use Period

Recommendation

- Agencies should develop policies to regulate and facilitate continued compliance as Credit properties reach Year 15 of the compliance period.
- Agencies should continue to enforce statutory compliance requirements, including income and rent restrictions, minimum set-aside, applicable fraction, general public use, Fair Housing compliance, habitability standards, utility allowance updates, Section 8 voucher acceptance, tenant income recertifications, and the annual owner certification of compliance.
- Agencies may choose to establish different criteria during the extended use period for other compliance rules, including policies on student households, the next available unit rule, unit transfers, frequency of property inspections, documentation for tenant income recertifications, and monitoring fees.
- Agencies should develop procedures for handling noncompliance in the extended use period and should require notification from owners in the event of ownership transfers.

44. Compliance Issues in Resyndication

Recommendation

- Agencies should develop policies on compliance issues encountered in resyndication of existing Housing Credit developments.
- Agencies should consider an existing household income-qualified under resyndication, as long as the household was initially income qualified during the original 15-year compliance period.
- Agencies should specify policies on amendment of the original extended use agreement.
- Agencies should provide guidance on applicable income limits to use in resyndication.

45. Standardized Forms and Reporting

Recommendation

- Agencies should adopt six standardized documents for monitoring:
 1. Owner's Certification of Continuing Program Compliance
 2. Tenant Income Certification
 3. Employment Verification
 4. Student Verification
 5. Certification of Zero Income
 6. Under \$5,000 Asset Certification



CONTACT

Jennifer Schwartz | Assistant Director for Tax Policy and Advocacy
jschwartz@ncsha.org

James Tassos | Senior Legislative and Policy Associate
jtassos@ncsha.org

ncsha.org
202-624-7710