

April 23, 2018

Stockton Williams  
Executive Director  
National Council of State Housing Agencies  
444 North Capitol Street NW  
Washington, DC 20001

Re: Implementation of Recommended Practice #27, Qualified Contracts

Dear Stockton:

The undersigned organizations, representing a broad cross-section of the Housing Credit community, are writing to urge all NCSHA members to promptly and fully implement the new Recommended Practice on Qualified Contracts. We represent developers, syndicators, lenders and other program participants who are committed to the ongoing success of the Housing Credit program and the long-term preservation of the affordable housing we have created together.

Last year, we submitted a joint comment letter which addressed several key areas of the draft Recommended Practices, including the preservation of Housing Credit assets. We were very pleased that NCSHA members incorporated many of our recommendations, including the addition of a Recommended Practice on Qualified Contracts. We applaud NCSHA members for recognizing the urgency surrounding preservation issues.

Given the rapidly growing use of the Qualified Contract (QC) process to convert Housing Credit properties to market after as few as 15 years of affordability, and in an effort to prevent further premature erosion of the Housing Credit stock and ultimately to protect the Housing Credit program itself, we urge each allocating agency to immediately implement such QAP changes and/or related policies necessary to:

- 1) Require a full QC waiver, for the full duration of the extended use period for affordability restrictions—a minimum of 15 years after the initial 15-year compliance period—for all new 9% and 4%/bond allocations, beginning with 2018 awards; and
- 2) Strongly discourage current Housing Credit property owners from pursuing the QC process for existing projects that are not already protected by a waiver.

We recommend that allocating agencies consider the following policies in implementing the Recommended Practice:

1. Immediately, with the 2018 allocation round and for bond deals that will receive determination letters under 42(m)(2)(D), agencies should require all deals to waive the right to pursue the QC process for the full extended use period.
2. For all existing properties, whenever an owner requests some action by the agency – for example, a change in loan terms, waiver of a requirement, etc. – the response should condition any such action on the owner permanently waiving any QC rights in connection with both current and future ownership of the property.
3. Where an owner must seek approval from the agency in connection with a transfer of ownership interest, or a transfer of property, or early pay-off of a mortgage, the agency should require a permanent waiver of QC rights as a condition in connection with current and future ownership of the property.<sup>1</sup>
4. Owners who utilize the QC process should be penalized in future Housing Credit allocations and 42(m)(2)(D) determination letters with a loss of points or disqualification from the program, just as they would for declaring bankruptcy or allowing a property to go into foreclosure. Such sanctions should apply to QC requests submitted after date the agency implements this policy.
5. For properties where owners do proceed with the QC process, agencies should establish resources to help preservation-oriented developers acquire these properties. While the statutory price may be problematic, ensuring the preservation of existing properties is much less costly than funding new development even if the amount paid for real estate exceeds its fair market value. Equally important, the investment avoids tenant displacement and the loss of valuable affordable housing.
6. When owners pursue the QC process, the agency should charge fees commensurate with its administrative costs of processing QC request and require owners provide all documentation necessary to determine the statutory price.

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<sup>1</sup> Agencies that don't currently have requirement for approval of ownership or property transfers, or for early pay-off of mortgages, should institute such requirements

To further assist allocating agencies in implementing these recommendations, attached please find the following documents:

- “Background on Qualified Contracts Under Section 42,” which provides general information on the QC issue; and
- “Misconceptions Regarding Qualified Contracts” which responds to potential objections that owners, developers and other stakeholders may voice when agencies are implementing the policies outlined above.

We respectfully request that NCSHA distribute this letter and attachments to its members. Should allocating agencies have questions, they should feel free to contact:

Ellen Lurie Hoffman, National Housing Trust:  
[eluriehoffman@nhtinc.org](mailto:eluriehoffman@nhtinc.org) or (202) 333-8931 x 130

We greatly appreciate the prompt attention allocating agencies are paying to this urgent issue. Thank you for your continued efforts to improve state administration of the Housing Credit program and for your attention to our concerns.

Enterprise Community Partners  
Local Initiatives Support Corporation/National Equity Fund  
National Association of Affordable Housing Lenders  
National Association of State and Local Equity Funds  
National Housing Trust  
Housing Partnership Network  
Stewards of Affordable Housing for the Future