HOUSING CREDIT CONNECT 2018

CHICAGO • JUNE 19-22

Achieving Long-Term Affordability Policy Issues

Exceptions to 30-Year Use Restrictions

- Foreclosure
- Qualified Contract

NCSHA

Planned Foreclosure

- Related party debt
- Not permitted if it is an “arrangement” to avoid long-term use restrictions
- Treasury makes determination
- Senate and House bills would transfer responsibility to allocating agency to make determination, with 60 day notice requirement

Planned Foreclosure

- NCSHA Recommended Practices
  - 60 day notice requirement with following information
    - Name of lender on note triggering foreclosure or deed in lieu of
    - Detail about origin of note, balance and annual debt costs
    - Position of note
    - Other note holders
    - Detailed reasons for failure to pay on note
    - Detailed description of efforts to reach accommodation
    - Relationship between holder of note and owner of property

Qualified Contract

- Owner makes request to Agency after year 14 to find a buyer at price set by statute
- Agency has 12 months to find a buyer
- Statutory price almost always exceeds market value making it difficult to find buyer
- If no buyer is found, owner has right to take property out of extended use requirement

Qualified Contract

- Losing thousands of units annually
- 9% deals -- 20 states require waiver, 25 states incentivize
- 4% deals -- 20 states require waiver, 11 state incentivize
- Potential huge political problem for program universally described as providing 30 years of affordability
- Bond deals particularly vulnerable politically since House Ways and Means has twice voted to repeal program

Qualified Contract

- NCSHA Recommended Practices
  - Require waiver in all cases going forward
  - Discourage owners from submitting properties
    - Penalize owners who convert Housing Credit properties
    - Condition any agency approval—transfers, prepayment, refinancing, etc.—on owner permanently waiving QC rights
    - Where owners do proceed with the QC process, charge fees, require documentation and establish resources to help preservation-oriented developers acquire these properties

Right of 1st Refusal

- Section 42 language intended to facilitate LP investors exiting partnership in year 15 at statutory price
- Some LPs are resisting without payoffs
- Number of disputes and some litigation
- Pending House and Senate bills would change the ROFR to a PO and permit purchase of partnership interests as well as property