Strategies for Preservation and Continued Compliance

NCSHA Preservation-Related Recommended Practices

- #26: Encouraging Preservation with the Housing Credit
- #27: Qualified Contracts
- #32: Foreclosure Prevention

Qualified Contracts

- Require all Housing Credit applicants — for 9 percent and 4 percent projects — to waive their right to submit a QC as a condition of receiving an allocation
- Not promote or encourage owners of existing developments to pursue a QC
- Establish disincentives in QAP for owners to undertake QC process for existing developments, including negative points on future applications
- Establish other policies to curtail the use of QCs, including conditioning the approval of transfers of Housing Credit properties or interests on a waiver of QC option by the purchaser/transferee

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We estimate at least **10,000 units** are being lost each year as a result of Qualified Contracts.

Qualified Contract Activity							
Total QC Activity by Year						Total QC Requests all 3 Years	
Total QC Requests (CY 2014)		Total QC Requests (CY 2015		Total QC Requests (CY 2016)			
Props.	Units	Props.	Units	Props.	Units	Props.	Units
122	**8,462**	**132**	**12,910**	**145**	**11,335**	**399**	**32,707**

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Many states require incentivize applicants to waive their right to a QC in both the competitive 9 percent and non-competitive 4 percent Housing Credit programs:

QC Policies in the 9% Housing Credit Program			QC Policies in the 4% Housing Credit Program		
Requirement to waive right to a QC	Incentive to waive right to a QC	For how many years beyond the initial 15 year compliance period is the right waived?	Requirement to waive right to a QC	Incentive to waive right to a QC[1]	For how many years beyond the initial 15 year compliance period is the right waived?
20 states	**25 states**	**3 - 35 years**	**20 states**	**11 states**	**5 - 35 years**

[1] While the 4% Housing Credit program is non-competitive, some states require developers seeking the Credit score a minimum number of points in the scoring process used to rank applications for the 9 percent program. In some of these cases, developers may choose to claim points available for waiving their right to a QC in order to earn the minimum required score to receive 4 percent Credits.

Potential Policies to Curtail Qualified Contracts for Existing Properties

- Condition any agency approval — transfers, prepayment, refinancing, etc. — on owner permanently waiving QC rights
- Sanction owners who utilize the QC process
- Where owners do proceed with the QC process, charge fees, required documentation, and establish resources to help preservation-oriented developers acquire these properties

Encouraging Preservation with the Credit

- Define strategic preservation objectives by which to prioritize properties for preservation
- Evaluate available federal, state, and local financing sources for preservation financing and recapitalization
- Revise QAP and other Agency preservation policies to ensure these policies are consistent with identified strategic preservation objectives and to eliminate any impediments to preservation
- Develop QAP policies on the use of 9 percent and 4 percent Credits for preservation, including specific policies on resyndication

Encouraging Preservation with the Credit

- Assess whether Credits and other recapitalization financing are necessary for each project as part of an overall preservation strategy and to determine the most efficient means of preservation
- Consider the consolidation of affordable scattered site properties into a single transaction for recapitalization
- Proactively assess the physical condition of existing Housing Credit developments and any risk of loss or conversion to market rate use during the upcoming extended use period
- Communicate with all owners of Credit developments to ensure they are aware of extended use period affordability requirements

Encouraging Preservation with the Credit

- Limit release of Credit developments from affordability restrictions to the two circumstances permitted by statute: foreclosure and qualified contract
- Analyze data on qualified contracts, amendment of extended use agreements, foreclosures, and early termination of the affordability period to determine trends and inform QAP policies on preservation and resyndication

Foreclosure Prevention

- In addition to monitoring continued compliance in the extended use period, monitor Housing Credit developments to identify properties in danger of foreclosure.
- If a property faces financial challenges, examine and consider restructuring strategies to prevent foreclosure.
- 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.

Foreclosure Prevention

- 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.
- 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.

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Foreclosure Prevention

- 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.
- Withhold consent for termination of the extended use agreement if the owner does not provide the information outlined above.
- Consider sanctions against owners who engage in a foreclosure deemed to be part of an arrangement with the taxpayer to terminate the extended use period on the development.