

U.S. DEPARTMENT OF THE TREASURY

Housing Crisis in Focus: LIHTC Best Practices to Discourage Qualified Contracts and Keep Housing Affordable for Longer

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Post-pandemic surges in housing costs have laid bare the housing affordability crisis facing Americans. According to [a report from the Harvard Joint Center for Housing Studies](#), a record-high number of renters are spending more than 30% of their income on housing and utilities. And economists agree – high housing costs are driven by a lack of affordable housing supply.

Enhancing federal supply-side incentives can grow the available affordable housing stock and ameliorate this crisis. The Low-Income Housing Credit (LIHTC) is the Federal government's largest tool to expand the supply of affordable housing: [the Urban Institute estimated](#) that about 25% of new apartments built in the United States between 2000 and 2019 were supported by LIHTCs.

The owner of a LIHTC building receives credits for a building that is subject to a restrictive covenant ensuring affordability for 30 years. However, because the initial compliance period (during which the owner is subject to loss of credits or recapture for noncompliance) lasts only for the first 15 years of the affordability period, some investors might attempt to dispose of the building before the end of the affordability covenant. An owner might seek to sell the building to a potential investors, who might be deterred by these rent restrictions. Certain provisions in the LIHTC statute enable investors to exit these affordable housing covenants early, removing affordable housing from the market.

QUALIFIED CONTRACTS

The Qualified Contract provision has been part of LIHTC statute since 1989, and was created to encourage investment in LIHTC buildings by providing credit-motivated potential owners with an exit option. After the 14th year of a project, an owner can ask the applicable State or local agency to find a buyer that will pay at least a statutorily defined amount for the affordable building. If the agency finds a buyer willing to offer a contract to buy under those terms (a

“qualified contract”), the building is sold, and affordability is preserved. If the agency fails to find such a buyer within a year, the affordability commitment ends, and the building can be converted to market-rate housing.

In 2012, the U.S. Department of Housing and Urban Development (HUD) published a study of Housing Credit properties after Year 15, finding that few properties had gone through the qualified contract process as of that time. In the years following that study, however, there have been more frequent terminations of affordability via qualified contracts because the statutory formula has resulted in qualified contract pricing that often far exceeds market value of the property as restricted. Thus, agencies have often been unable to find buyers willing to pay the qualified contract price for a rent-restricted building. [Experts estimate](#) that the qualified contract provision results in the loss of affordability of between six thousand to ten thousand low-income units annually. Approximately 115,000 units have been lost from the affordable housing stock through the use of qualified contracts over time.

The tax code ([§ 42\(m\)\(1\)\(B\)\(ii\)\(II\)](#)) directs state allocating agencies to adopt Qualified Allocation Plans (QAPs) that give preference to LIHTC “projects obligated to serve qualified tenants for the longest periods.” When affordable housing developments are converted to market rate properties prior to the end of the at-least-30-year affordability period, this reduces the supply of low-income housing.

Treasury strongly supports efforts undertaken by state allocating agencies to adopt policies that prioritize credits for, or limit credit allocations to, projects for which the owner agrees to waive the qualified contract option.

As early terminations of properties from the program became more common, most state allocating agencies adopted policies that bar or discourage the use of the qualified contract provision in future LIHTC projects. However, properties financed before agencies put such policies into place are still able to go through the qualified contract process and are thus still at risk of early loss from the affordable stock.

Many agencies have adopted policies that require or incentivize waiving the right to a qualified contract, and some disincentivize owners from requesting qualified contracts for LIHTC projects already in service. With these policies, the agencies have maximized the impact of the LIHTC tax incentive and, by preservation, have increased the supply of affordable housing. Below are some avenues that states have followed both to prioritize LIHTC allocations to housing projects that stay affordable for longer and to discourage owners of current LIHTC-supported properties from utilizing the qualified contract provision.

DISCOURAGING QUALIFIED CONTRACTS IN FUTURE ALLOCATIONS WITH REQUIRED WAIVERS

Dozens of state allocating agencies require all new LIHTC applicants to waive their ability to ask for a qualified contract as a condition of receiving an allocation of credits. For example, North Dakota is one of several states whose QAPs require that new LIHTC applicants must waive their right to request a qualified contract. (The National Housing Trust created a map of all these states [here](#).) Nevada has adopted a similar policy, requiring that “all applicants for 4% and 9% LIHTCs ... sign a waiver forgoing the Qualified Contract process.”

If a state requires all applicants to forgo the qualified contract process, it ensures that, absent foreclosure, all new LIHTC-supported projects remain affordable to low-income tenants for at least the full 30-year term, not just 15 years. It is important to note that while some agencies require owners to waive the right to a qualified contract for their 9 percent program, they may not do so for their 4 percent program, or vice versa. **Treasury encourages agencies to apply waiver requirements to both components of the LIHTC program.**

DISCOURAGING QUALIFIED CONTRACTS IN FUTURE ALLOCATIONS WITH INCENTIVES FOR PARTIAL WAIVERS

Short of requiring qualified contract waivers, state allocating agencies have created incentives that encourage LIHTC applicants to waive this right or to provide additional years of affordability before using it. Several states, including Georgia, Hawaii, and Missouri, have adopted QAPs that use a point system for allocating credits. The criteria for points incentivize applicant projects to waive, or at least to delay, the use of qualified contract provisions. For example, [Georgia's QAP](#) allocates one point to owners willing to forgo the qualified contract cancellation option for at least 5 years, two points to owners willing to forgo the qualified contract cancellation option for at least 10 years, and three points to owners willing to completely forgo the qualified contract cancellation option (i.e., all 15 years).

While not as impactful as banning use of the qualified contract provision outright, this system reduces the years of affordability that could be lost because of the provision because it directs more LIHTC support toward projects that have delayed use of the right.

Discouraging requests for qualified contracts in LIHTC projects that have already received allocations of potential credits

Some state allocating agencies have adopted policies that disincentivize owners of existing LIHTC properties from invoking the qualified contract provisions. Among other avenues, some state agencies have clarified that an applicant for an allocation of potential LIHTCs will be disadvantaged, or even rejected, if the applicant had previously requested a qualified contract or had been related to an owner at the time that the owner made such a request.

Allocating agencies in some states will not make allocations to applicants related to entities that have used qualified contracts in the past. In Maine, applications will be deemed ineligible if the applicant, a principal, or affiliates of either have in the past sought a qualified contract; the 2024 North Carolina QAP states that “the Agency may disqualify any owner, Principal or management agent, who ... [has] requested a qualified contract for a North Carolina tax credit property.” Other state allocating agencies, such as those in Montana, Vermont, and Virginia, also maintain the right to disqualify such applicants. And the Indiana, Kansas, and New Hampshire allocating agencies award negative points to applicants who have previously requested qualified contracts — conversely, the South Carolina State Housing Finance and Development Authority identifies applicants that have not previously requested a qualified contract and gives them extra points in the process. These practices not only discourage future projects from using the qualified contract process, but also disincentivize current LIHTC property owners from doing so.

FEDERAL EFFORTS TO MITIGATE THE USE OF QUALIFIED CONTRACTS

HUD, the Federal Housing Finance Agency (FHFA), and the U.S. Department of Agriculture’s Rural Housing Service (RHS) have each taken steps or announced an intention to take action to mitigate the use of qualified contracts. HUD’s office of Multifamily Housing has issued a proposed [notice](#) that would restrict access to Federal Housing Administration Multifamily rental and Risk Share insurance programs to project owners who agree to waive any right to request a qualified contract. In late 2023, [FHFA issued guidance](#) to Fannie Mae and Freddie Mac barring the government-sponsored enterprises from becoming equity investors in properties for which the owner has not waived its right to a qualified contract.

CONCLUSION

By adopting QAPs that discourage, or bar, requests for the agency to find a buyer willing to offer a qualified contract, many state allocating agencies have prioritized funding projects that provide affordable housing to qualified low-income tenants for longer. As part of its all-of-the-

above effort to boost housing affordability and supply, Treasury supports efforts by state allocation agencies and HUD to adopt practices such as these that maximize the creation and preservation of affordable housing. Through these actions, state allocating agencies and HUD can be effective partners in allocating resources to maximize and preserve the supply of affordable housing, and lower housing costs for American families.