

Proactive Preservation



DISCUSSION LEADER

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PARTICIPANTS

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NCSHA Update

Multifamily Housing

September 28, 2021

State of Production & Preservation (P2)

Priorities, Goals, and Objectives

- Transition into the New Model
 - Preservation Strategy for the 515 Portfolio
 - MPR Pipeline
 - Updated NOSA / NOFA Schedule
 - Stakeholder Outreach, Input, Source Leveraging
 - QAP Preservation Priority Ranking
 - USDA Funding / QAP Compatibility
 - Quick Hits:
 - Develop Critical Infrastructure and Process Improvements
 - Guaranteed Fees
 - CNA Term Modifications
 - Transfer Tool Account for and Analyze All Exceptions & Waivers
 - Implementation of Administration's Priorities
 - Credit Report Fees
 - Develop and Strengthen SOPs for Internal P2 Processing and Intra-Division Handoffs
 - Production and Preservation Pipeline and Platform
 - Other Process Improvements
 - Use FY22 Data to Create Baseline / Develop Execution Predictability
- 

Multifamily Housing



Multifamily Housing Deputy Administrator's Office
Nancie-Ann Bodell, Deputy Administrator

State Offices
Marketing & Outreach

Field Operations Division
Ernie Wetherbee, Director

Northeast Region

Northeast Routine Servicing Teams 1-4

Northeast Troubled Asset Servicing Team

South Region

South Routine Servicing Teams 1-9

South Troubled Asset Servicing Team

Midwest Region

Midwest Routine Servicing Teams 1-8

Midwest Troubled Asset Servicing Team

West Region

West Routine Servicing Teams 1-4

West Troubled Asset Servicing Team

Production & Preservation Division
Dan Rogers, Director

Processing & Report Review

Branch 1 (Northeast & Midwest)

Branch 2 (South & West)

Underwriting

Branch 1 (Northeast & Midwest)

Branch 2 (South & West)

Closing Branch

Program Support Branch

Asset Management Division
Jen Larson, Director

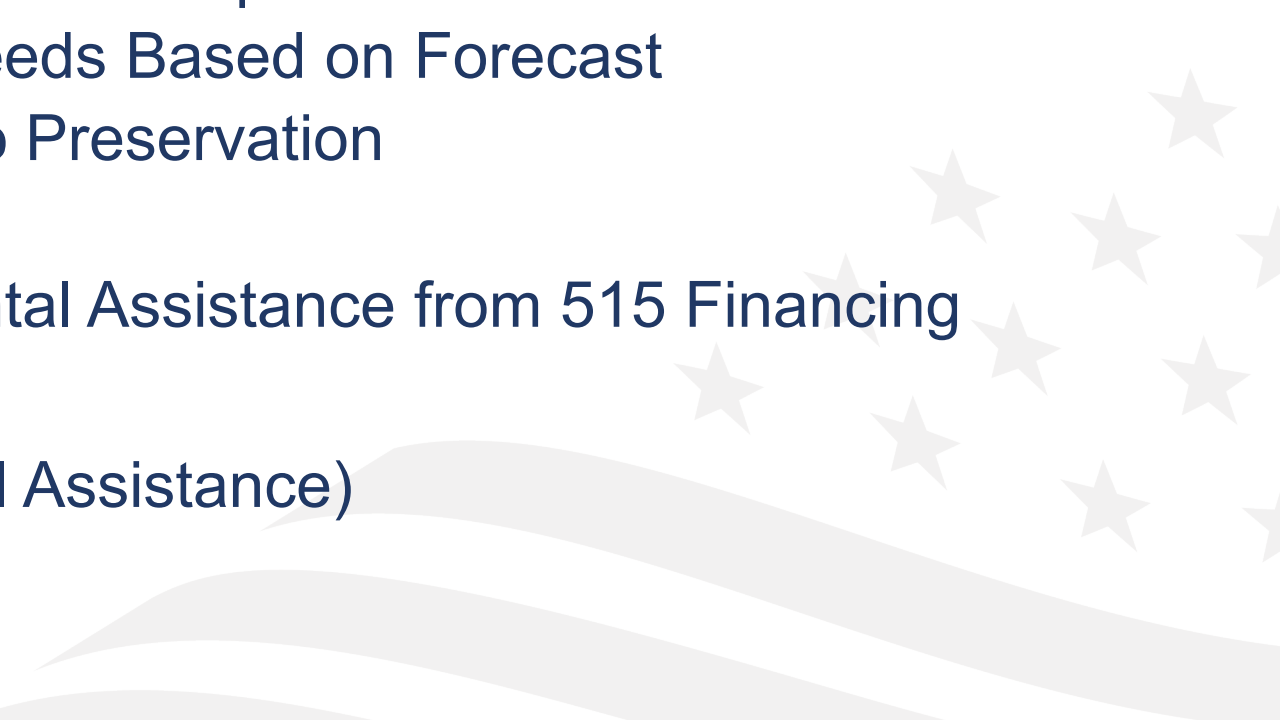
Servicing Support Branch 1
(Northeast & Midwest)

Servicing Support Branch 2
(South & West)

Risk & Counterparty Oversight
Branch

Policy & Budget Branch

Preservation Strategy for 515 Portfolio

- Enhanced Collaboration with Asset Management and Field Operations
 - Forecast Mortgage Maturity, Expiration of Affordability
 - Analysis of Other Preservation- and Recapitalization-driven Factors
 - Identify Anticipated Budgetary Needs Based on Forecast
 - Factor in a Risk-rank Approach to Preservation
 - Continue Advocacy to Decouple Rental Assistance from 515 Financing
 - Preservation Fund (Additional Rental Assistance)
- 

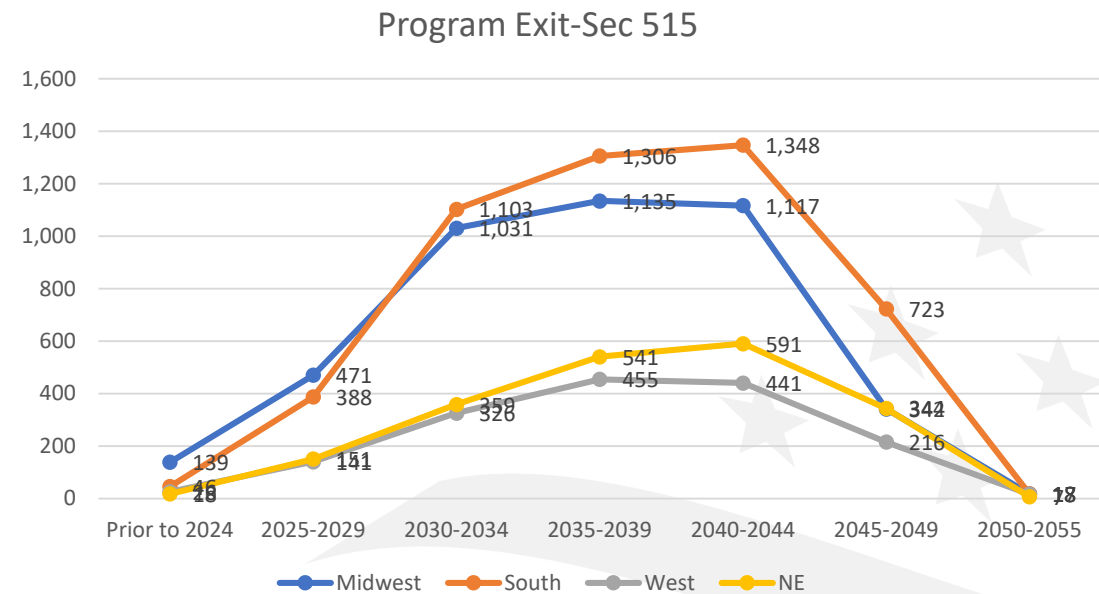
Preservation Strategy for 515 Portfolio Mission Risk – Program Exit by Program and Region

Data as of December 31, 2020

Section 515

Estimated Program Exit Year Range	Midwest	South	West	NE
Prior to 2024	139	46	26	18
2025-2029	471	388	141	151
2030-2034	1,031	1,103	326	359
2035-2039	1,135	1,306	455	541
2040-2044	1,117	1,348	441	591
2045-2049	342	723	216	344
2050-2055	18	18	17	7
TOTAL	4,253	4,932	1,622	2,011

Maturity of loans based on servicing regions and program



MPR Transactions (2018 – present)

Multifamily Housing Preservation and Revitalization Demonstration Program

Approved to Date (2018 – Present)

Transactions	Agency Debt Deferral	0% Loans	Grants	Soft Second Loans
218	\$120,345,988	\$25,824,144	\$657,110	\$89,794,514

MPR Pipeline

Transactions	Anticipated Need
171	~\$300 million

Next Steps:


- Address MPR Pipeline when funds are available
- MPR No-Cost Debt Deferral NOSA: Target Date of December 1, 2021
- Enhance MPR Delivery / AMD & FOD Coordination as part of Preservation Strategy

Status of P2 NOSAs, NOFAs, & RFPs

NOSA / NOFA / RFP	Status
Off-Farm Labor Housing New Construction Round 1	Published 02/02/2021 <i>(Awards to be announced on 9/30)</i>
Housing Preservation Grant	Published 06/02/2021 <i>(Migration to SFH, 9/26)</i>
Off-Farm Labor Housing New Construction Round 2	Published 08/03/2021 <i>(Opened 9/1, closes 11/1)</i>
MFH NP Tech Assistance Grant	Target Publication Date 10/18/2021
MPR Demonstration / Debt Deferral	Target Publication Date 12/01/2021
Off-Farm Labor Housing Repair	Target Publication Date 12/01/2021
Farm Labor Housing Tech. Assistance Grant	Target Publication Date 12/31/2021
Off-Farm Labor Housing New Construction Round 3	Target Publication Q1 CY2022

Production & Preservation (P2)


Stakeholder Outreach / Source Leveraging

- Preservation Priorities in Qualified Allocation Plans
 - Outreach to HFAs / State Agencies Regarding Priority Preservation
 - Available Strategies
 - Input from USDA on Attributes of Priority Assets
 - Set-aside for RD-assisted Preservation
 - USDA Funding Round / QAP Compatibility
 - Synchronize NOFA / NOSA Cycles with Other Public Lending Cycles
 - Modifying NOFA / NOSA Language
 - Modifying USDA / RD Award Letters
 - Continued Stakeholder Outreach
- 

Production & Preservation (P2)

Quick Hits

Develop Critical Infrastructure and Process Improvements

- *538 Guaranteed Fee Reduction (Abby Boggs, Tammy Daniels)*
 - *Examining Across-the-Board Reduction in Fees*
 - *Deeper Reduction for Properties that Feature:*
 - *538 New Construction / Sub Rehab with Energy Efficiency / Green Components*
 - *Preservation of Existing 515, 514 / 516 Assets*
 - *Workforce Housing*
 - *CNA Term Modification (Martha Hanson, Carlton Jarratt)*
 - *15-Year Term vs. 20-Year Term*
 - *PAT Compatibility*
 - *Industry Feedback on Functionality*
 - *Further Develop Standards for CNAs, CNA Providers*
 - *Multifamily Housing Transfer Tool (Stephanie Vergin)*
 - *Development of Internal and External Resource Guide on Transfer Processing*
- 

Production & Preservation (P2)

Quick Hits

Develop Critical Infrastructure and Process Improvements

- Incorporating Administration's Priorities in NOFAs / NOSAs (*Abby Boggs, Jonathan Bell, Martha Hanson, Stephanie Vergin, Christa Lindsey, Carlton Jarratt, Fallan Faulkner*)
 - *Assisting Rural communities recover economically from the impacts of the COVID-19 pandemic, particularly disadvantaged communities;*
 - *Ensuring all rural residents have equitable access to RHS programs and benefits from RHS funded projects; and*
 - *Reducing climate pollution and increasing resilience to the impacts of climate change through economic support to rural communities.*
- Credit Report Fees (*Dean Greenwalt*)
 - Regulation and Handbook Changes
 - Transfers responsibility of Credit Report procurement from MFH during application process to applicant as part of required application documentation

Production & Preservation (P2)

Quick Hits

Develop Critical Infrastructure and Process Improvements

- Enhanced Internal Communication
 - Two-step Pass-off between Production & Preservation and Field Operations Division
 - Concept Meetings During Underwriting
 - Hand-off Meeting Post-Construction
 - Development of Standard Operating Procedure
 - Clearly Defines Roles
 - Data Entry Quality Control
 - Transfer of Documents
- Consolidated P2 Pipeline
- Prepayment Process Improvements
- Source Cost of 3rd Party Reports
- Standardized Closing Instructions



FY22: The Year of Baseline Data

- Collect Baseline Data to Analyze and Forecast Predictability
- Incorporate FY22 Baseline Timeframes into Programmatic Processing Timeframes
- Establish Timeframes as Formal Goals for USDA P2
- Modify as Appropriate When Performance Indicates Timeframes Can Be Shortened
 - Goals:
 - Eliminate Lingering Non-responsiveness to Industry
 - Substantially Decrease Processing Timeframes



Questions?

Q & A

Daniel.Rogers2@USDA.gov





Enterprise Community Partners

NCSHA's 50th Annual Conference

September 28, 2021

Stacy Esbrook,
Affordable Housing Program Director

OUR WORK

A coordinated approach with unmatched impact.



We Support Community Development Organizations on the ground

- 2,000+ housing and community development partners
- Innovate and scale best practices
- Advisory services and technical consulting
- In all 50 states, plus D.C., PR and VI



We Aggregate & Invest Capital in Homes & Communities Using financial discipline and creativity to achieve impact

- \$44 billion invested since 1982
- 781,000 affordable homes and counting
- Led creation of the Low-Income Housing Tax Credit
- Leading Community Development Financial Institution (CDFI)



We Advance Nonpartisan Housing Policy at every level of government

- Largest housing policy team in U.S.
- Federal, state and local level advocacy
- Equitable solutions to advance racial equity, including source-of-income protections and eviction prevention



We Build & Manage Communities Ourselves and everything we do is informed by the residents we serve

- 13,000+ affordable homes
- 21,000+ residents
- Co-development opportunities for BIPOC-led partners

Our Goals

We focus on the greatest need – the massive shortage of affordable rental homes – to achieve three goals:



Increase Housing Supply

Preserve and produce good homes that people can afford



Advance Racial Equity

After decades of systematic racism in housing



Build Resilience & Upward Mobility

Support residents and strengthen communities to be resilient to the unpredictable

HOW WE WILL DO IT

Equitable Path Forward

\$350M

GROWTH FUND

Provide debt, equity, grants and innovative credit enhancements to attract an additional \$3.1 Billion of capital

\$15M

DEVELOPER ADVISORY SERVICES

Strengthen and support local development organizations and small business

\$10M

LEADERSHIP PROGRAM

2-year leadership – modeled after the proven rotational programs at major industrial and financial firms

NETFLIX

\$25M

COMMITMENT TO SEED
THIS INITIATIVE



Detroit Preservation Partnership



Preservation Action Plan 2018

“Investment brings new opportunity yet can also bring challenges in the form of rising housing costs. Ensuring that new affordable homes are part of the city’s growth is one strategy to achieve inclusion. Preserving the city’s existing affordable housing stock is just as critical to allowing current residents to remain in their communities and providing future affordable housing choices.”

Preserve 10,000 units with
in 5 years



DATA
DRIVEN
DETROIT



Building The Foundation

- ✓ Establish intergovernmental group (IGG)
- ✓ Develop Preservation Prioritization Framework
- ✓ Affordable Housing Resource Directory
- ✓ Preservation Risk Profiles
- ✓ NOAH Ecosystem Mapping
- ✓ Preservation Policy Recommendation

Affordable Housing Database

- ✓ Build robust database
- ✓ Dynamic user interface
- ✓ Automate updates where possible

DATA 
DRIVEN
DETROIT

NOAH Expertise

- ✓ **Prioritization Framework**
- ✓ **Policy Recommendations**
- ✓ **NOAH Ecosystem Mapping**
- ✓ **Multifamily Action Planning/Facilitation**



CIC

community investment
corporation

Technical Assistance Series

- ✓ LIHTC Year 15 – What to Expect
- ✓ Don't Sleep on Your Documents
- ✓ Working with Government Agencies
- ✓ Working with Consultants
- ✓ Asset Management for Developers
- ✓ Show Me the Money!



Facilitating Preservation

- ✓ Regulated & NOAH
- ✓ 2,000 Units
- ✓ COVID
- ✓ Predevelopment Vendors
- ✓ Pipeline



ELEVATE

Equity through
climate action



United Community
Housing Coalition

Single -Family Scattered Site

- ✓ LIHTC Single -Family, Scattered Site
 - ✓ Homeownership
 - ✓ Long-term Rental
- ✓ Evaluation & Action Planning
- ✓ Technical Assistance & Advising



CHN
Housing
PartnersSM



cinnaire[®]
ADVANCING COMMUNITIES

Thank
You

 Enterprise®



Introduction to Cinnaire

Who We Are

Cinnaire is a full-service community development financial partner that supports community stabilization and economic development by developing and nurturing partnerships with investors and mission-focused organizations. We provide creative loans, investments, and best-in-class services to partners.

What We Do

- Over \$3.5 billion in community impact
- Over \$350 million in community development loans
- Over 650 housing developments under asset management

Cinnaire Lease Purchase Work in Detroit

How did we get here?

- Cinnaire became the GP of 4 LIHTC properties in the City
 - Scattered Site Single Family
 - New Construction all of which are 15-17 years old
 - All four properties checked the lease purchase box
 - 188 units spread in 4 neighborhoods in the City of Detroit
- Non Profit GP that went out of business or got out of housing
 - Cinnaire came in as GP to protect the credits
 - Had to purchase some third party debt on properties
 - Managed the properties like any other LIHTC rental deal

Cinnaire Lease Purchase Work in Detroit

What did we do?

- Needed to figure out a lease purchase strategy
 - Had to figure out how we were going to embark on a lease purchase execution
 - Made a strategic plan decision within organization to increase low income homeownership
 - How were we going to implement this plan?
 - Partnered with CHN Housing
 - They were very experienced in lease purchase and had executed it very well in Cleveland
 - Needed to figure out how to bring that model to Detroit

Cinnaire Lease Purchase Work in Detroit

How did we do it?

- CHN Partnership
 - CHN became property management of each property
 - CHN has a sales team that works with residents
 - Work with residents to change the mind set of being a renter to homebuyer
 - Had to figure out how to price the units- what resident can afford, what does the debt look like, how many residents can actually purchase
- Other Partnerships
 - City of Detroit
 - Opportunity Resource Fund- Lender for home buyers
 - Chase, Chemical Bank, Flagstar Bank- provided grants for the program

Cinnaire Lease Purchase Work in Detroit

How has it worked?

- Homebuyer sales
 - Sales of homes started December 2020
 - 2 properties have started selling, third will start in October
 - 17 homes sold to date
 - Now averaging 5 home sales a month over the past 2 months

Lessons Learned?

- Need to engage residents early
- Took a couple years to start selling houses
- Physical needs of houses
- Be sure to work with lenders-one of our property lender being refinanced

Rural Development Preservation

What are we doing?

- Seeing more 4% preservation deals overall
- Have completed a few Rural Development properties that are bundling multiple RD deals into on LIHTC project
- Seen it in various states throughout our footprint

Financing Structure

- Being done at 4% bond deals
- Typically have some serviceable hard debt
- Most have soft debt including existing RD debt rolling over to the new deal
- Some have utilized Average Income Set Aside
- Properties in different areas of the state
- Have separate budgets, loans and rental assistance contracts but are combined as one operating structure-one audit, one LIHTC award

Rural Development Preservation

How are they operating?

- Overall operating as expected
- Multiple locations hasn't been an issue
- Management and general partners have been able to report correctly
- Nothing out of the ordinary compared to other multifamily deals

How does it look in the future?

- Likely see more of it- especially with 4% fix
- Investors have not had any issue with it aside from average income angst
- Good way to preserve RD deals that are very tough on their own
- Seems to be more across the country and template to make the process easier

Equity Market In General

- Pricing is steady in some deals and slightly down in others
- Yields are up about 35 bps on multi-investor funds
- Preservation deals- 2-3 cent higher pricing than new construction with immediate credit delivery
- CRA need is still out there- seeing pricing in the upper 80's
- Non CRA low to mid 80's
- Lots of 4% deals out there in our footprint-more demand than investor dollars right now
- Most are in multi-funds not direct
- Get in early before funding is gone
- 4% fix made more deals feasible
- Direct Investors looking for construction loan in addition to equity
- Construction costs continue to climb- makes penciling deals harder to keep costs in line from start to close
- Lumber cost coming down a bit but labor costs are going up



Year 15-Exit Disputes

- ▶ Historical understanding and practices
- ▶ Emergence of Aggregators
- ▶ Litigation discussion



Aggregators

- ▶ “Affordable housing asset management” firms have been amassing investor interests in LIHTC partnerships.
- ▶ Treat the partnership agreements as purely financial instruments for generating profits, rather than projects intended to promote low-income housing.
- ▶ The Aggregators seek to extract maximum value from partners at the expense of low-income housing and the communities the program is designed to serve.
 - Leveraging economies of scale and resource disparities against partners to thwart transfers or obtain significant buyouts.

***CED Capital Holdings 2000 EB, LLC
v. CTCW Berkshire Club, L.L.C.
2020 WL 6537072 (Fla.Cir.Ct. Nov. 3, 2020)***



Florida Court recognizes several important industry concerns:

- *“a trend in the LIHTC industry in which certain entities, like Hunt, are acquiring limited partner interests in LIHTC partnerships – known as “Aggregators” – who then attempt to extract value out of such interests that were not intended by the original parties to the partnerships.”*
- *the “Aggregator’s playbook” is designed to disrupt year-15 exits “to drive a cash return, ultimately to Hunt, that was never intended by the original tax credit investor or anyone originally involved in the Project.”*

***CED Capital Holdings 2000 EB, LLC
v. CTCW Berkshire Club, L.L.C.
2020 WL 6537072 (Fla.Cir.Ct. Nov. 3, 2020)***



- *“this type of activity has become more common in the LIHTC industry and the Court’s decision here is in accord with decisions from other, similar cases in different jurisdictions where parties, like Hunt, have come into LIHTC partnership agreements and attempted to extract value or proceeds that is not otherwise permitted under the operative contracts like the Partnership Agreement here.” (citing 9 cases and two sources)*

Year 15 Litigation



- Section 42(i)(7) Right of First Refusal
- Purchase Options and Option Prices
- Fair Market Value / Appraisals / Broker's Opinion of Value
- Capital Accounts / Liquidation
- Refinancing
- Forced Sale Provisions
- Limited Partner Removal Initiatives
- Qualified Contracts

Various Tactics



- Dispute Section 42(i)(7) ROFR Sales.
 - Insist that there be a bona fide, enforceable and binding third-party offer to purchase a property regardless of what the Partnership Agreement may require.
 - Insist that LP consent rights provide the LP with sole discretion to accept a third-party offer.

ROFR Case Studies



- Minnesota
- Massachusetts
- Washington
- Florida
- New York
- Michigan

Federal Legislation to Amend Section 42(i)(7)



Change ROFR to Purchase Option for future deals and remove exit taxes from price

Clarify current law:

- Reference to "property" includes all assets of partnership

- Investor consent not required to exercise ROFR

- Exercise of ROFR does not require bona fide offer and any entity, including a related party may make an offer

- ROFR may be exercised through purchase of partnership interests as well as transfer of property

- Clarifications would not supersede express language in agreement

What Can HFAs Do to Resist This Trend - For Existing Properties



- ▶ Require agency review of any sales or transfer of investor interest. Allow agency to reject any party that has refused to honor a Section 42 ROFR, been involved in litigation against a nonprofit sponsor, etc.
- ▶ Ensure developers understand their ROFR rights & current agency regulations.
- ▶ Help every nonprofit prepare for Year 15 discussions with investors to ensure nonprofit exercises its ROFR rights & to facilitate an orderly exit.
- ▶ Sponsor and/or provide financing to entities that make bona fide offers to purchase Housing Credit properties, both to trigger ROFR & be prepared to purchase.

What Can HFAs Do to Resist This Trend – For New Allocations



Exclude equity providers which sought early termination of a Housing Credit extended use agreement, refused to recognize a nonprofit ROFR, or otherwise undermined the long-term affordability of a property.
Require ROFR agreements to include features to protect the rights of nonprofit sponsors.

Recommended ROFR Language for New Deals



- ▶ Require partnership agreements to include language that automatically converts the ROFR to a purchase option if federal legislation amending Section 42(i)(7) is enacted.
- ▶ Require minimum 24-month ROFR term.
- ▶ Provide that consent to execution of ROFR may not be unreasonably withheld by investor.
- ▶ Provide that ROFR not be conditioned upon receipt by the owner of a bona fide offer from any party.
- ▶ Investor acknowledgement that return on investment is primarily in the form of tax benefits and not dependent on project's appreciation in value.
- ▶ Investor acknowledgement that Section 42 ROFR is not the same as a ROFR under state statutory, court-interpreted or common law.

New York City Department of Housing Preservation & Development Draft 2021 QAP



Partnership agreements must include the following:

- (i) **subject to the consent** of one or more limited partners of the owner, which consent may not be unreasonably withheld, conditioned or delayed, sell the project to the ROFR grantee in connection with the ROFR grantee's exercise of the ROFR;
- (ii) **without the consent** of any Limited Partner, sell the project to the ROFR grantee following the General Partner's receipt of a **bona fide third party offer** to purchase the project; and
- (iii) **offer the project for sale publicly** and accept an offer from the highest bidder to purchase the project, subject to the ROFR grantee's rights to exercise the ROFR and purchase the project at the ROFR Purchase Price.

Virginia Housing Development Authority Draft 2022 QAP



“The executive director is hereby authorized to require any or all of the following with respect to applications: (i) provisions to be included in the applicant’s organizational documents limiting transfers of partnership or member interests or other actions detrimental to the continued provision of affordable housing; (ii) a designated form of right of first refusal document; (iii) terms in the extended use agreement requiring notice and approval by the executive director of transfers of partnership or member interests; (iv) debarment from the program of principals having demonstrated a history of conduct detrimental to long-term compliance with extended use agreements, whether in Virginia or another state, and the provision of affordable tax credit units; and (v) provisions to implement any amendment to the IRC or implementation of any future federal or state legislation, regulations or administrative guidance.”

Massachusetts Department of Housing & Community Development Rental Housing Rapid Protection Initiative NOFA



“Sponsor must commit to selecting a syndicator and/or investor acceptable to DHCD. The syndicator/investor cannot have been involved in any “aggregator” activity, in Massachusetts or in other states, seeking to undermine the exercise of a LIHTC right of first refusal option, including, without limitation:

Refusal to honor a LIHTC right of first refusal/right of first option in favor of a non-profit sponsor executed concurrent with the initial tax credit equity closing for a LIHTC project.

Lawsuit against general partner and/or non-profit sponsor challenging exercise of LIHTC right of first refusal/right of first option.

Lawsuit seeking to remove general partner/managing member of LIHTC limited partnership/LLC, absent clear evidence of fraud or serious mismanagement on the part of the general partner/managing member. For purposes of this provision, actions taken to preserve affordability of a LIHTC property and/or management in furtherance of the charitable mission of the non-profit sponsor shall not constitute serious mismanagement.”

Questions



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