



NH&RA 2023 Summer Institute

Hot Topics In Affordable Housing

**Recommended Practices in Housing Credit Administration
Summary of Proposed Changes – July 2023**

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NCSHA Housing Credit Recommended Practices Background

NCSHA has worked with the state Housing Credit allocating agencies since 1992 to develop 'Recommended Practices in Housing Credit Administration'.

These Recommended Practices were designed to:

- strengthen state Housing Credit program administration;
- demonstrate responsible and proactive state administration to Congress and the IRS; and
- preempt unworkable federal statutory and regulatory requirements.

The Recommended Practices were developed with significant input from Housing Credit industry stakeholders.

NCSHA Housing Credit Recommended Practices

Background

The Recommended Practices are voluntary standards that states can choose to adopt or adapt if necessary to better fit the unique circumstances at the state level.

Implementation of the Recommended Practices has been favorably cited numerous times by the Congress as well as the General Accountability Office (GAO) in its reviews of the Credit.

Most recent update to Recommended Practices adopted in 2017.

Total of 46 recommendations addressing all aspects of Housing Credit allocation, underwriting, and compliance monitoring.

NCSHA Housing Credit Recommended Practices Task Force

NCSHA's Board of Directors created an executive director task force last year to consider potential changes to the existing 46 Recommended Practices to ensure their continued effectiveness.

The Board also asked the Task Force to consider and formulate new recommendations as necessary to respond to current Housing Credit challenges and opportunities, including:

- significantly higher development and operating costs;
- heightened threats to preserving affordability and protecting low-income renters;
- enhanced efforts to expand opportunity for renters and industry participants of color; and
- new strategies for optimizing the siting of Housing Credit developments.

NCSHA Housing Credit Recommended Practices Task Force

The Task Force has met several times during the past year, surveyed all Housing Credit allocating agencies for input, and considered comments from key Housing Credit industry groups on potential changes to the Recommended Practices.

The group is finalizing a revised set of recommendations for the Board to consider at its next meeting in Boston in October.

That report will likely include refinement of 21 of the existing 46 Recommended Practices, as well as two potential new recommendations addressing Housing Credit tenant protections and the nonprofit right of first refusal (ROFR).

Housing Credit Recommended Practices

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RP1: Qualified Allocation Plans

Proposed change to suggest Agency consideration of opportunities for the QAP to support priorities on social mobility, economic opportunity, and environmental sustainability:

Agencies should design QAPs and/or related documents to encourage the type, location, and tenancy of affordable housing most needed in the state. **In light of housing's impact on social mobility, economic opportunity, and environmental sustainability, Agencies should consider opportunities for the QAP to support state priorities in these areas. As Agencies consider priorities to encourage through the QAP and/or related public documents, they should also consider the impact of these priorities** **In every case, Agencies should carefully assess the cost implications of their QAP policy decisions on upfront development costs and long-term operating costs of Housing Credit properties.**

RP1: Qualified Allocation Plans

Proposed change to suggest advance notice of QAP changes to allow stakeholders sufficient time to design proposals to meet new priorities:

Agencies should review their priorities on ~~an annual~~ a regular basis, engage stakeholders as part of the process, provide a reasonable time period for public input, and, after careful consideration of such input, update QAPs and/or related public documents as necessary to reflect current housing priorities. Given the lengthy predevelopment timelines typical in Housing Credit development, Agencies should, to the extent possible, provide advance notice of QAP changes to allow stakeholders sufficient time to design developments that meet new priorities.

RP2: Allocation and Underwriting of Bond Deals

Proposed changes to clarify that evaluation and underwriting of tax-exempt bond developments should be similar to (but not necessarily identical to) non-bond financed developments:

Allocating Agencies' QAPs or other Housing Credit allocation guidelines should specify that Agencies will evaluate and underwrite tax-exempt bond-financed Housing Credit properties ~~as they do~~ in a similar manner to non bond-financed Housing Credit properties. This applies to all bond-financed properties, including those in which the bonds were issued by an entity other than the Agency that allocates the Credit.

While Agencies should apply similar underwriting standards and rigorous evaluation to Housing Credit developments financed with tax-exempt bonds, they should consider how the financing structure, transactional costs, project size, and risk profile of such developments may differ from non bond-financed Housing Credit properties to determine appropriate variations in project evaluation and financial underwriting criteria.

RP6: Application Procedures and Site Visits

Proposed change to suggest Agencies consider technological advancements in mapping and site review to create site visit efficiencies:

Agencies should visit proposed development sites (or hire a third party analyst to conduct a site visit) whenever possible at the application stage to assess the viability of the site and to check for nearby incompatible uses, physical barriers to development, or other significant shortcomings. Agencies should consider recent technological advancements in mapping and site review that may create efficiencies by supplementing or eliminating the need for certain physical site visits.

RP7: Development and Management Experience

Proposed changes to suggest 1) consideration of other multifamily affordable housing development experience in addition to Housing Credit experience; and 2) identifying opportunities to encourage more diversity in development and management teams:

Given the complexity of the Housing Credit program and the importance of solid development and management experience, Agencies should encourage program sponsors with no Housing Credit **or comparable multifamily affordable housing development** experience to partner or joint venture with a more experienced sponsor or developer.

Agencies should identify opportunities to encourage more diversity in development and management teams by reducing barriers to entry, building capacity among new program participants through training or technical assistance, facilitating joint ventures, providing predevelopment capital, or creating other incentives for participation by underrepresented groups. Any such incentives should require material participation and genuine involvement of the participant as a condition to qualify.

RP9: Promoting Resident Choice and Opportunity

Proposed change to clarify that the recommended practice is consistent with the statutory obligation to affirmatively further fair housing (AFFH) and should be coordinated with AFFH planning efforts:

Agencies should develop QAP and/or other program policy documents to facilitate the siting of new affordable housing in diverse locations, including low-distress, low-poverty areas that provide residents with access to various amenities—typically considered “areas of opportunity”—as well as areas that historically have had higher poverty and distress rates, but in which housing and other stakeholders seek to create new opportunities for residents through holistic community revitalization. Such considerations are consistent with the statutory obligation to affirmatively further fair housing under the 1968 Fair Housing Act and should be coordinated with the state’s affirmatively furthering fair housing planning efforts.

RP10: Facilitating Rural Development with the Credit

Proposed change to suggest considering opportunities to use the Average Income Test to expand the eligible pool of qualified tenants and to identify financial tools to enhance feasibility in rural areas:

Allocating Agencies should analyze recent state experience in using the Housing Credit in rural rental housing development and consider QAP incentives or other policy initiatives to ensure rural housing needs are adequately addressed. Agencies should work with rural stakeholders and program investors to study current impediments to rural development and make appropriate changes to underwriting criteria or other policies to maximize investor interest in rural areas.

Agencies should consider opportunities to encourage use of the Average Income Test minimum set-aside in rural areas to expand the eligible pool of qualified tenants, and to identify financial tools to enhance financial feasibility of rural developments.

RP11: Native American Housing Development

Proposed change to suggest considering opportunities to use the Average Income Test to expand the eligible pool of qualified tenants and to identify financial tools to enhance feasibility in areas with Native American populations:

Agencies should analyze recent state experience in using the Housing Credit for Native American housing development and consider QAP incentives or other policy initiatives to ensure Native American housing needs are adequately addressed.

Agencies should consider opportunities to encourage use of the Average Income Test minimum set-aside in areas with Native American populations to expand the eligible pool of qualified tenants, and to identify financial tools to enhance financial feasibility of Native American housing developments.

RP13: Sustainable Development

Proposed change to suggest Agency consideration of the extent to which certain locations within a state present greater risk of exposure to natural disasters:

In developing Housing Credit development priorities, Agencies should consider the extent to which certain locations present greater risk of exposure to natural disasters and the potential impact of such locations on Housing Credit residents as well as on construction materials and requirements, insurance premiums, development costs, and investor interest.

RP14: Ensuring Reasonable Development Costs

Proposed change to suggest Agencies consider differences in development costs between new construction and rehabilitation:

This process will produce a standard that either prescribes a single cost limit applicable to the entire state or multiple limits that take into account disparities in costs due to project location, type of construction, population served, and potentially other project characteristics. **As part of this analysis, Agencies should consider any difference in development costs between new construction and rehabilitation (including preservation, adaptive reuse, and historic rehabilitation) and provide separate cost standards if there are notable differences in such costs.**

RP14: Ensuring Reasonable Development Costs

Proposed changes to suggest 1) Agency review of cost standards on a regular basis and 2) appropriate flexibility in the application of cost standards:

Agencies should review development cost standards on a regular basis, communicate proposed cost limit changes to stakeholders in a timely manner and with an opportunity for comment, and adjust standards as necessary to acknowledge cost increases that are not temporary in nature as well as inflation.

To respond to periodic and temporary volatility in development and operating costs, construction material shortages, increased financing costs, and unanticipated development delays that contribute to cost increases, Agencies should allow flexibility in the application of cost standards, including opportunities for waivers and/or exceptions to such standards when appropriate.

RP14: Ensuring Reasonable Development Costs

Proposed change to clarify that cost limits for tax-exempt bond developments should be similar to (but not necessarily identical to) non-bond financed projects:

The Allocating Agency should apply ~~the same~~ similar standards and rigorous evaluation to Housing Credit developments financed with tax-exempt bonds, recognizing that such developments may have comparable construction costs but significant differences in financing structure, transactional costs, project size, and risk profile that warrant a separate cost standard.

RP14: Ensuring Reasonable Development Costs

Proposed changes to suggest Agencies 1) consider opportunities to reduce development costs through alternative construction methods or materials and 2) review multifamily construction and design guidelines (in addition to QAPs) with the goal of reducing development costs:

To further encourage reasonable Housing Credit development costs, Agencies may supplement development cost limits with other policies such as limitations on eligible basis or incentives for reasonable development costs in competitive scoring criteria. **In evaluating such incentives, Agencies should consider opportunities to reduce development costs through alternative construction methods or materials.**

Finally, each Allocating Agency should regularly review its QAP and related allocation guidelines, **along with multifamily construction and design guidelines**, with the goal of reducing development costs.

RP15: Developer Fee Limits

Proposed change to clarify that the developer fee standard for tax-exempt bond developments should be similar to (but not necessarily identical to) non-bond financed projects:

While Agencies should apply ~~the same~~ a similar developer fee standard to Housing Credit developments financed with tax-exempt bonds, they should recognize that such developments may have significant differences in financing structure, transactional costs, project size, and risk profile that warrant a separate standard.

RP15: Builder Fee Limits

Proposed change to suggest flexibility within the 14 percent cap on builder profit, overhead, and general requirements:

In addition to establishing developer fee limits, Agencies should include in their QAP or other Housing Credit allocation guidelines limits on builder or general contractor charges. Generally, the standards set forth below should not be exceeded except for developments with characteristics, such as small size or location in difficult development areas that may justify higher fees:

- Builder's profit - 6 percent of construction costs;
- Builder's overhead - 2 percent of construction costs; and
- General requirements - 6 percent of construction costs.

While a combined 14 percent cap on builder's profit, builder's overhead, and general requirements is typical in the construction industry, Agencies may choose to provide flexibility among the three amounts within the 14 percent cap for developments that have a documented need for higher overhead or general requirements, especially as developments experience construction delays that may increase these costs.

RP17: Issuance of IRS Form 8609

Proposed change to suggest more specificity in the timing of IRS Form 8609 issuance by Agencies:

Each Allocating Agency should establish a process for requiring and analyzing cost certifications for all developments as part of the final feasibility evaluation, prior to issuing IRS Form 8609. As part of this analysis, the Agency should judge the reasonableness of the cost components. Agencies should **strive to** issue Form 8609 in a timely manner, **ideally within 90 days of** ~~after~~ receiving all **complete** required documentation.

RP19: Operating and Replacement Reserves

Proposed change to suggest Agencies consider increasing minimum reserve requirements to acknowledge recent significant increases in multifamily operating costs:

Minimum operating reserves should generally ~~equal~~ **be no less than** four to six months of projected operating expenses plus: i) debt service payments; and ii) annual replacement reserve payments.

Minimum replacement reserves should generally ~~equal \$250~~ **be no less than \$300** per unit per year for new construction developments for seniors and ~~\$300~~ **\$350** per unit per year for new construction developments for families and developments involving rehabilitation.

RP20: Operating Expense Projections

Proposed change to suggest Agencies consider operating expense trends in developing underwriting assumptions:

Allocating Agencies should promote long-term economic viability by requiring development owners to include realistic and itemized anticipated operating expenses in project proformas. In underwriting such expenses, Agencies should consider data from syndicators, investors, lenders, and their own portfolios.

Agencies should also consider trends in operating expenses, including property insurance costs, utility rates, labor costs, real estate taxes, and other operating expenses and adjust operating cost assumptions used in project underwriting accordingly.

RP22: Minimum Rehabilitation Threshold

Proposed change to suggest Agency review of the minimum rehabilitation threshold on a regular basis:

Allocating Agencies should establish a minimum rehabilitation threshold to assure meaningful, rather than simply cosmetic, rehabilitation of properties. Rehabilitation should be adequate to ensure the long-term physical viability of the property and supported by a capital needs assessment.

Agencies should review the minimum rehabilitation threshold on a regular basis, communicate proposed changes to stakeholders in a timely manner and with an opportunity for comment, and adjust the threshold as necessary to acknowledge rehabilitation cost increases and inflation.

RP23: Capital Needs Assessment

Proposed change to suggest consideration of potential natural disaster risks that properties face as part of the CNA:

Allocating Agencies should require any award of Housing Credits for rehabilitation to be preceded by and take into account a capital needs assessment by a competent third party, such as a licensed architect or engineer. The assessment should examine and analyze the following:

- Potential risks the property faces considering the impact of recent natural disasters in the area.

RP25: Extended Use Agreements

Proposed changes to suggest requiring owners to 1) notify Agencies of any transfer of ownership, qualified contract request, or right of first refusal activity; and 2) notify tenants and the local government in advance of the expiration of a property's affordability restrictions:

Allocating Agencies should require extended use agreements to:

- Require owners to notify the Agency of any transfer of ownership, qualified contract request, or right of first refusal activity; and
- Require owners to notify tenants and the local government in which a property is located at least 12 months in advance of the expiration of a property's long-term use restrictions and consider appropriate enforcement mechanisms for this requirement.

RP26: Encouraging Preservation with the Credit

Proposed change to suggest that Agencies assess the physical and financial condition of existing Housing Credit developments approaching Year 30 to identify preservation strategies:

To further support preservation objectives, Agencies should:

- Assess the physical and financial condition of existing Credit developments approaching the end of the affordability period at Year 30 to identify opportunities to extend affordability with targeted preservation strategies;

RP26: Encouraging Preservation with the Credit

Proposed change to suggest that Agencies consider whether it is appropriate to relax certain requirements in the extended use period as a preservation strategy:

In addition to considering the preservation needs of properties that will soon reach the end of their affordability periods, Agencies should consider the preservation needs of Credit properties that are reaching the end of their initial 15-year compliance period. To accomplish this goal, Agencies should:

- Consider whether it is appropriate to relax certain agency requirements in the extended use period as a strategy to facilitate preservation and continued affordability;

RP27: Qualified Contracts

Proposed change to suggest Agencies develop strategies and identify financial tools to assist developers in the preservation of projects that have submitted qualified contract requests:

Finally, Agencies should consider developing strategies and identifying financial tools to actively assist developers in the acquisition and preservation of projects that have submitted qualified contract requests.

RP34: Owner and Manager Training

Proposed change to suggest inclusion of tenant protection strategies, eviction prevention policies, and tenant notification requirements in training agendas:

At a minimum, owner and manager training should cover key compliance terms, qualified basis rules, determination of rents, tenant eligibility, file documentation, next available unit procedures and unit vacancy rules, fair housing and accessibility rules, Agency reporting requirements, record retention requirements, ~~and~~ site visits, **tenant protection strategies, eviction prevention policies, and tenant notification requirements.**

RP37: Utility Allowances

Proposed change to further encourage Agencies to allow use of the energy consumption model utility allowance option given recent significant expansion of federal resources for energy efficiency:

To provide flexibility for Housing Credit owners to utilize the optimal utility allowance for each development and to encourage utility allowances that accurately reflect anticipated utility consumption, Agencies should:

- Permit Housing Credit developments to select from all utility allowance options available under IRS regulation; ~~and~~
- Specify requirements for application of alternative utility allowances (i.e., Agency estimate, utility company estimate, HUD Utility Schedule Model, or energy consumption model) in both new developments and existing developments that seek a change in utility allowance; **and**
- **Facilitate use of the energy consumption model utility allowance option by specifically allowing a third-party energy and water consumption analysis prepared by a licensed engineer, another qualified professional, or the Agency itself.**

RP41: Encouraging Fair Housing Compliance

Proposed changes to suggest that Agencies 1) monitor practices that limit access to properties for households with Housing Choice Vouchers; and 2) incentivize owners to use tenant selection plans for tenant screening:

To further encourage fair housing compliance, Agencies should implement monitoring procedures to ensure that Housing Credit developments comply with federal nondiscrimination standards for all protected classes, **including prohibiting unlawful practices that limit access to Housing Credit properties for households with Housing Choice Vouchers.**

Agencies should require owners and property managers to attend fair housing training prior to leasing the property and on a regular basis throughout the compliance and extended use periods; **incentivize the use of tenant selection plans that include procedural protections for tenant screening and admissions, plus limits on the use of criminal records and prior eviction judgments;** and encourage the use of affirmative fair housing marketing plans at Housing Credit developments.

NEW: Housing Credit Tenant Protections

Proposed new recommended practice suggesting Agencies require or incentivize owners and property managers to implement several renter protection policies in Housing Credit developments, including tenant selection plans, rental agreements with tenant protections, policies relating to rent increases, and notification to tenants on various issues:

Allocating Agencies should require or incentivize owners and property managers to implement the following tenant protection policies in Housing Credit developments:

- Tenant selection plan guidelines that include procedural protections for tenant screening and admissions, and that align with applicable federal guidance limiting the use of criminal records and prior eviction judgments;
- Rental agreements with tenant protections, including fair lease and occupancy rules, meaningful language access for tenants with limited English proficiency, good cause eviction requirements or comparable eviction prevention policies; and grievance procedures for resolving landlord/tenant disputes;

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Allocating Agencies should require or incentivize owners and property managers to implement the following tenant protection policies in Housing Credit developments:

- A limitation of one rent increase per certification period per household;
- A minimum of 90-days notice to tenants of any applicable rent increase;
- A minimum of 120-days notice to tenants of any rent increase in excess of 5 percent of the existing rent, with a provision allowing tenants to terminate the lease with no penalty or fees in such circumstances;

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Allocating Agencies should require or incentivize owners and property managers to implement the following tenant protection policies in Housing Credit developments:

- Fair and transparent policies relating to any fees charged to tenants;
- Notification to tenants of the three-year vacancy decontrol period upon termination of the extended use agreement due to qualified contract; and
- A minimum of 12-months notice to tenants of an expiring extended use period.

NEW: Nonprofit Right of First Refusal

Proposed new recommended practice suggesting that Agencies consider adopting various policies to protect the nonprofit right of first refusal (ROFR) statutory allowance:

Agencies should support the long-term preservation of properties by assisting nonprofit Housing Credit sponsors or collective tenant organizations to exercise the statutory allowance that partnership agreements may include a right of first refusal (ROFR) to purchase applicable properties after the close of a building's 15-year initial compliance period.

Agencies should consider adopting policies to protect the ROFR for future properties, such as:

- A requirement that partnership agreements include language clarifying that the ROFR outlined in Section 42(i)(7) is not the same as a right of first refusal under common law practices and that the ROFR purchase price should be calculated as the minimum purchase price permissible under Section 42 and does not automatically include unpaid fees or loans;

NEW: Nonprofit Right of First Refusal

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Agencies should consider adopting policies to protect the ROFR for future properties, such as:

- A requirement that partnership agreements include language clarifying that a ROFR cannot be conditioned upon receipt of a bona fide offer from any party, including a third party, and that the nonprofit or tenant collective organization has the authority to take action to trigger the ROFR and close on the sale of the property through the ROFR;
- Investor transfer policies that require agency approval of the transfer of investor interest and a letter of intent to vet investor eligibility;
- Incentivizing applications including a ROFR for the minimum statutory purchase price and with minimal restrictions on transfers to ROFR holders; and
- Rejecting or discouraging Housing Credit applications from entities with a record of refusing to recognize nonprofit ROFR requirements.

NEW: Nonprofit Right of First Refusal

Proposed new recommended practice suggesting that Agencies consider implementing policies to assist nonprofits seeking to exercise the ROFR for existing properties:

Agencies should also consider implementing investor transfer policies that require agency approval of the transfer of investor interest and a letter of intent to vet investor eligibility to assist nonprofits and tenant collective organizations seeking to exercise the ROFR for existing properties.