



August 30, 2022

Stockton Williams
Executive Director
National Council of State Housing Agencies
444 North Capitol Street NW, Suite 438
Washington, DC 20001

Re: Comments on National Council of State Housing Agencies Recommended Practices in Housing Credit Administration

Dear Mr Williams:

On behalf of the members of the Low-Income Housing Tax Credit (LIHTC) Working Group, we appreciate the opportunity to comment on the National Council of State Housing Agencies' (NCSHA's) Recommended Practices in Housing Credit Administration. The members of the LIHTC Working Group are participants in the affordable housing community who work together to help resolve technical LIHTC policy issues and provide recommendations to make the LIHTC even more efficient in delivering benefits to help build and preserve affordable housing and serve low-income residents. Our group includes nonprofit and for-profit developers, syndicators, investors, lenders, lawyers and other affordable housing professionals.

Enclosed please find the LIHTC Working Group's responses to your survey. We hope that you find this input helpful as you update the Recommended Practices. Thank you in advance for your time and consideration. Please do not hesitate to contact us if you have any questions regarding our comments or if we can be of further assistance.

Very truly yours,

Novogradac & Company LLP

By

Dirk Wallace, Partner

Mark Shelburne, Housing Policy Consultant

cc: Jennifer Schwartz and James Tassos

Attachment: LIHTC Working Group comments



NOVOGRADAC™

3025 North Wooster Avenue, Dover, Ohio 44622 | P 330.365.5400 | F 330.365.5401
www.taxcredithousing.com | dirk.wallace@novoco.com



Task Force on Recommended Practices in Housing Credit Administration Survey: Key Issues for Task Force Consideration

Please enter your responses to the ten questions, referencing the August 2 [Request for Input on Key Issues for Task Force Consideration](#) memo for the context and Current Recommended Practices for each of the five sections.

Use as much space as you would like; there is no character limit. Please send your responses to Jim Tassos at jtassos@ncsha.org by close of business on August 30.

Names: Dirk Wallace and Mark Shelburne

Organization: Novogradac's LIHTC Working Group

Email: Dirk.Wallace@novoco.com; Mark.Shelburne@nc-llp.com

I) Responding to Higher Development and Operating Costs

1. Do any of the [current recommended practices](#) relating to this issue—in particular, the practices on development cost limits (RP 14), developer fee limits (RP 15), cost certifications (RP 17), reserve levels (RP 19), and operating expenses (RP 20)—need revision in light of the current volatility in development and operating costs?

RP 14: The current practice for development costs is insufficiently nuanced. Overall, agencies should treat rehabilitation separately from new construction, as the method of determining anticipated budgets is not the same. Ideally, the practices would be split in two.

For rehabilitation, the estimate depends largely on the assessments/inspections, the results of which vary by property. The maximum amount allowed should not be an up-front, across the board policy. Also, spending more often is an indication of the units being a higher priority since residents are living in worse conditions and thus in greater need of assistance.

For new construction, the practice should recommend against using an all-in per-unit standard. The reason is certain line-items, especially real estate purchase and site work, are dramatically different between locations. Those being higher or lower result in contracting or expanding the rest of the budget, respectively. Equally important is a more explicit recommendation against using a “race to the bottom” incentive for making overly aggressive promises. Such policies invariably have negative outcomes.

RP 15: The current recommendation to treat 9% LIHTCs and tax-exempt bonds the same has an understandable motivation. However, it does not reflect the reality that the latter type of development requires substantially more work and risk for similar sized properties. As such, it is overly broad (and widely not followed in QAPs).

RP 17: Agencies have varying staff capacities to process cost certifications. Even so, the recommendation is incomplete without an expressed expectation to complete the work in a timely manner once an owner has submitted all required materials. The practice also should explain certain actions are excessive, such as asking for backup documentation already certified by the accountant and not following a materiality standard (i.e., expecting explanations for discrepancies of <\$10).

RPs 19 and 20: The text in these practices is good, but few agencies follow the recommendation to use something other than across the board amounts. NCSHA may want to investigate why.

2. What, if any, new recommended practices should state allocating agencies consider to respond to current volatility in costs?

The suggestions for RP 14 would help with cost volatility.

Another step is to post limits separately closer to the application deadline. The amounts need to be public in time for developers to prepare submissions, but in many states the QAP is complete nine months or longer beforehand (especially when it's for two years).

Most important is revisiting awards from recent past cycles. Agencies should assist developers facing new insurmountable gaps. The current practice is to create cycle-specific ad hoc solutions. While better than nothing, such an approach is inefficient and causes problematic uncertainties. The last few years provide enough lessons learned to establish standing policies for how to help.

II) Preserving Affordability and Protecting Low-Income Renters

3. Do any of the [current recommended practices](#) relating to this issue—in particular, the practices on encouraging preservation (RP 26), qualified contracts (RP 27), and compliance in the extended use period (RP 43)—need revision in light of current preservation challenges?

RP 26: When possible (not a small state), different set-asides and selection criteria for rehabilitation can be very beneficial, primarily because of allowing for different threshold requirements and selection criteria. For example, unlike with new construction, there is no reason to penalize existing housing because of being distant from amenities; the location decision has already been made.

4. What, if any, new recommended practices should state allocating agencies consider to respond to current preservation challenges, including the premature ending of affordability restrictions by qualified contract, challenge to the right of first refusal provision, or the end of the statutory affordability period at Year 30?

Opportunities to preserve affordability do not always fit with QAP application deadlines. Agencies could set-aside LIHTCs for quick turn-around awards to existing housing at imminent risk of conversion.

The Year 30 problem adds new emphasis to the recommendation in RP 26 to proactively assess the existing portfolio of LIHTC properties.

III) Expanding Opportunity for Renters and Industry Participants of Color

5. Do any of the **current recommended practices** relating to this issue—in particular, the practices on reducing local barriers to development (RP 4), development and management experience (RP 7), promoting choice and opportunity for residents (RP 9), and fair housing compliance (RP 41)—need revision in light of enhanced focus on the need for more equitable development and management?

RP 4: The recommendation should encourage doing the minimum necessary to meet the required notification (i.e., sending only to the mayor) and that it can occur after developments have secured zoning approvals. Also, a QAP could acknowledge that sending it at all would end upon the relevant provision of AHClA being enacted.

While RP 4 is correct regarding requirements for a local contribution, it should not mirror the AHClA provision regarding prioritization. Agencies have valid reasons to reward assistance from cities and counties more than those from other sources. These funds and supports (e.g., fee waivers) provide crucial leverage or gap filler through a uniquely fair and transparent process (in most cases). The latter aspect is very important in the intensely scrutinized LIHTC competition; developers understandably protest others benefitting from what they see as inappropriate advantages. The risk of such policies being used for inappropriate NIMBY purposes is very low at worst.

RP 7: NCSHA may receive input to no longer encourage partnerships between new and experienced developers. Since the program is more difficult and riskier than in years past, if anything this recommendation should be more demanding. Furthermore, most states already have an excess of development capacity.

RP 9: In this context, there are two separate considerations: process and substance. The first involves making it easy to understand how the policy works out on the ground. Developers should be able to determine where to look for potential sites without third-party assistance.

Substance is more involved. At a high level, the key is understanding how incentives drive choices. For example, being too prescriptive can lead to an excess of properties in one area and/or unintentionally encouraging paying too much for land. For more of a discussion see:

<https://www.novoco.com/notes-from-novogradac/creating-competition-post-6-10>

6. What, if any, new recommended practices should state allocating agencies consider to expand opportunity for renters and industry participants of color?

At the risk of noting the obvious, practices for renters and industry participants are entirely distinct. With the former, agencies can realize the greatest impact from their

compliance and asset management policies (QAPs are only prospective). Staff should regularly work with owners and interest groups on continually making improvements, as well as developing new training and best practices.

As for industry participants, the ideas are rapidly evolving. Agencies should seek to learn from their counterparts in other states about what is successful or has unintended consequences. While such communication already occurs, it has an added urgency for this purpose.

IV) Optimizing the Siting of New Housing Credit Developments

7. Do any of the [current recommended practices](#) relating to this issue—in particular, the practices on qualified allocation plans (RP 1), concerted community revitalization plans (RP 3), site visits (RP 6), market analysis (RP 8), promoting choice and opportunity for residents (RP 9), rural development (RP 10), and Native American development (RP 11)—need revision in light of current housing market dynamics?

RP 1: The practice should encourage agencies to ensure the QAP works not only in its substantive provisions, but also as a document. Too many are unnecessarily lengthy and difficult to comprehend, which creates problems for everyone. For more of a discussion see:

<https://www.novoco.com/notes-from-novogradac/qap-drafting-considerations-post-9-10>

RP 3: Some agencies may benefit from an express recognition that implementing the current text is essentially impossible without making subjective determinations.

RPs 10 and 11: The practices could mention that agencies have a responsibility to serve their entire jurisdiction, and QAPs can ensure allocating certain amounts of LIHTCs based on geography (presuming sufficient eligible applications). If the population is large enough for multiple meaningful competitions, separate set-asides allow different selection criteria.

8. What, if any, new recommended practices should state allocating agencies consider to optimize siting of new Housing Credit developments?

The suggestion for RP 14 to separate out the amount paid for real estate relates to this purpose: counting land towards an all-in per unit standard creates a disincentive to find sites in high-income areas.

V) Other Topics

9. In addition to the four major issues outlined above, are there other [existing recommended practices](#) that you suggest need revision? If yes, please specify what revisions are needed and why.

RP 2: The practices could acknowledge and make recommendations regarding the increasing demand for tax-exempt bonds. While technically separate from LIHTCs, the two are inexorably linked. An important consideration is the competitive allocation

should be based on developments' relative merits, not which jurisdiction is acting as the issuer.

RP 25: In some states the extended use agreements contain numerous specifics, mostly taken from the approved application. While agencies have a responsibility to ensure developers live up to their representations, circumstances change over the years. By contrast, tenants' third-party beneficiary rights mean recorded restrictions effectively are frozen in time. Therefore, agencies should carefully consider what goes into these agreements.

RP 36: The income and rent limits are so complex that making them available risks errors by anyone involved. Instead, agencies should use Novogradac's online calculator or determine the applicable limits on a property-by-property basis. The tool is free and has no competition.

RP 46: In addition to training, agency staff should attend affordable housing conferences in their jurisdiction. Exposure to outside perspectives can lead to invaluable learning and better appreciation for the challenges faced by others.

10. Are there other aspects of state Housing Credit administration that would benefit from new recommended practices? If yes, please specify what new practices are needed and why.

The most readily apparent example is the average income minimum set-aside. That said, we will need to wait for the final guidance.

Similar to helping recent awards with increased costs, unfortunately not all agencies have a set practice for recycling allocations. Not stating how the process will work leads to concerns, which can cause problems such as delayed funding source closings.

Some states still administer their programs on software meant for an entirely distinct purpose (usually Excel). Doing so creates countless small wastes of time which together add up to significant delays and inefficiencies. Instead, all allocators should use online application and database software. In addition to substantially faster processing, it reduces mistakes, allows staff to increase focus on higher-level tasks, and minimizes the need to backfill vacant positions. (The preceding includes RP 29, but is broader since these systems start with the initial application.)

At a higher level, there should be a recommendation encouraging an organization-wide culture of valuing efficiency. Ideally, everyone would continually seek ways to streamline processes.