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Incorporating Historic Preservation into Low-Income Housing Through Qualified Allocation Plans

The federal Low-Income Housing Tax Credit (LIHTC) program was enacted by Congress in 1986 to create a tax credit incentive to encourage the development and construction or rehabilitation of rental housing for low-income households. The program provides each state with a set number of these tax credits to allocate annually, based generally upon population.

LIHTCs are allocated by state housing agencies in accordance with the terms of each state's qualified allocation plan (QAP). The QAP generally establishes a state's selection criteria for how its credits will be awarded, giving preference to projects serving the lowest income tenants, and provides a procedure for the state agency to monitor if credits are awarded appropriately. The QAPs are drafted annually by state housing agencies and must meet certain requirements. A majority of QAPs are also developed to meet specific state objectives and, as a result, QAPs vary considerably from state to state.

In order to receive an LIHTC allocation, developers of low-income rental housing must submit an application describing their project to the state housing agency in the state in which the project is located. Based upon the selection criteria in that state's QAP, an application will generally be awarded a certain number of points or other preference, and if the project achieves a certain score, it will be awarded an allocation of tax credits.

What Are the Required Criteria for QAPs?

Currently the federal code requires every state housing agency to use the following eight "selection criteria" in its QAP:

- project location (e.g., designated target areas);
- housing needs characteristics (e.g., income mix of tenants within the project);
- project characteristics including whether the project includes the use of existing housing as part of a community revitalization plan (e.g., percentage of low-income units, number of units);
- sponsor characteristics (e.g., nonprofit sponsorship, minority participation in development and management, experience in development);
- tenant population with special housing needs (e.g., elderly, disabled, homeless);
- public-housing waiting lists;
- tenant populations of individuals with children; and
- projects intended for eventual tenant ownership.



The Yale Building in Chicago is an excellent example of how historic structures can be rehabilitated for use as affordable housing. Photo by John M. Luce.

Changes Affecting Historic Buildings

Following the passage of the Housing and Economic Recovery Act of 2008 (HERA), two additional selection criteria were added as requirements:

- the energy efficiency of the project; and
- the historic character of the project.

An explanation prepared by the Joint Tax Committee clarifies that "historic character" relates to "encouraging rehabilitation [of] certified historic structures" (Code section 47(c)(3)). These changes required by the HERA are effective for LIHTC allocations made after December 31, 2008, and must be addressed in each state's 2009 (and thereafter) QAP. This means that each state must now address how historic preservation is treated within the QAP. Previously less than half of the states listed historic preservation as a consideration in determining QAP preferences.

A second new provision of the HERA permits state housing agencies the discretion to increase by up to 30 percent the LIHTCs available to a project. State housing agencies are expected to set standards in their QAP for determining which projects will receive a 30 percent boost. However, it is unclear whether state housing agencies are required to implement additional 30 percent basis boost guidelines. This affords states the opportunity to amend their QAPs to specifically permit historic rehabilitation projects



Mercy Housing won a 2007 National Preservation Honor Award for the preservation of 10 historic structures in Savannah resulting in 70 units of affordable rental housing in a National Register Historic District. Photos by Robin L. Haddock.

to benefit from this discretionary 30 percent boost. The Indiana Housing and Community Development Authority is one of the first state agencies to propose language that would specifically permit historic rehabilitation projects to benefit from the discretionary 30 percent basis boost. For more information, go to www.housingonline.com/NewsArticle.aspx?NewsArticleId=77161.

Preservationists' Role

The federal code sets forth certain basic requirements that must be met by every state with respect to adopting its annual QAP, including that QAPs be approved annually by a governmental entity after a public hearing and following reasonable public notice.

In addition to these federal requirements, a handful of states impose another level of governmental approval before a QAP may be adopted or amended. For example, several states, including but not limited to California, Florida, Illinois, Pennsylvania, and Kentucky, require that changes to their QAPs must be approved by both the state housing agency and by the governor of that state. While every state requires some form of public notice and comment period prior to the adoption of its annual QAP, some states, including Pennsylvania, Virginia, and Oregon, forego a formal public approval process with respect to any technical or other amendments. In general, however, most states require some form of public approval before a QAP may be amended.

With the recent amendments required by the HERA, state housing agencies whose QAPs are not currently in compliance must revise their 2009 QAPs to include both the energy efficiency and the historic character of a project as additional selection criteria. States with QAPs that are technically in compliance with the HERA requirements may nevertheless wish to amend their QAPs to incorporate the best-practice model language described herein, including establishing criteria for increasing by up to 30 percent the LIHTCs available to energy efficient and historic projects. Such changes will generally be subject to the public hearing and notice requirements discussed above.

Preservationists should be aware of opportunities to provide comment to state housing agencies regarding how best to incorporate historic preservation in their state's revised QAP. Contact information for state housing agencies can be found at www.novoco.com/low_income_housing/lihtc/state_agencies.php.

Current Treatment Of "Historic Character"

According to a review of QAPs conducted in 2005 by the National Trust for Historic Preservation, approximately 21 QAPs award points based upon preservation or historic-related criteria. The appendix shows a sampling of 17. Of those, 14 use a scoring methodology that includes a point-based preference for historic buildings; the average weight ascribed to preservation or historic-related scoring criteria was approximately 5.1 percent.

It is noteworthy that in some states, points are awarded solely based upon whether the project involves a historic building with no explicit requirement that the project demonstrates that it will follow federal or state historic rehabilitation standards. On the other hand, Virginia requires that the "rehabilitation will be completed in such a manner as to be eligible for historic rehabilitation tax credits" and this presumably applies even if the project does not actually apply for and utilize historic tax credits. States such as Arizona, Delaware, Georgia, Indiana, and New Jersey award points (or additional points) for projects that qualify for and receive historic rehabilitation tax credits.

Best Practices and Model Language for Preservation-Related Preferences

To assist state housing agencies in implementing the new HERA requirement regarding the addition of "historic character" as a selection criteria, the following model language may be added to the selection criteria of your state's QAP. It is based upon a review of current preservation and historic-related criteria in various state QAPs.

Historic Character

_____ points are available for projects of historic character ("Historic Character").

"*Historic Character*" means any project consisting of one or more structures (1) (a) individually listed in the National Register of Historic Places; (b) located in a registered historic district and certified by the Secretary of the Interior to the Secretary of the Treasury as being of historic significance to the district; (c) that have received local landmark designation through a local historic preservation commission through an ordinance; or (d) located within an area that has been zoned as a historic area; and (2) the rehabilitation of which will be completed in such a manner as to be eligible for federal and/or state historic rehabilitation tax credits.

Required Documentation: (1) (a) A letter from the Department of the Interior's National Park Service (NPS) verifying that the structure(s) are listed in the National Register of Historic Places or verification of the listing through the NPS website at www.cr.nps.gov/nr; (b) an Evaluation of Significance in the form of a Historic Preservation Certification Application Part

1–Evaluation of Significance (Form 10-168) from the NPS; (c) a letter from the local historic preservation commission evidencing the local landmark designation; or (d) a copy of the municipal zoning ordinance and a letter from the local municipality verifying that the project is located in an area zoned as historic and that the project will meet the requirements outlined in the applicable zoning ordinance(s); and (2) a letter from the state historic preservation office evidencing that the rehabilitation is a certified rehabilitation which will be completed in a manner consistent with the historic character of the structure or the district in which the structure is located and eligible for federal and/or state historic rehabilitation tax credits.

Further, following is recommended model language that may be added to your state’s QAP to specifically permit historic rehabilitation projects to benefit from the discretionary 30 percent basis boost:

130 Percent Area

The practice of rehabilitating historic buildings for use as affordable housing has become a proven community development strategy. A white paper prepared for the National Trust for Historic Preservation found access to services, walkability, and transit orientation afforded by historic neighborhoods (including proximity of historic buildings to work, shopping, and transportation) to be key benefits of this approach. The National Park Service (NPS) in its publication *Affordable Housing through Historic Preservation* noted that owners may find that community resistance to the siting of affordable housing is overcome where the project entails the renovation of a local landmark. Building amenities unique to historic buildings, relief from zoning restrictions, the availability of property tax breaks, and the intangibles associated with culture and heritage also can come into play.

Another significant driver of the reuse of historic buildings for affordable housing over the years has been the availability of tax credit equity. Particularly popular has been the twinning of the federal Historic Rehabilitation Tax Credit (HTC) provided for in Section 47 of the Internal Revenue Code with the Section 42 Low-Income Housing Tax Credit. The benefits of this approach, however, are reduced by virtue of a provision of the tax code which provides that LIHTC–eligible basis must be reduced by the amount of HTCs claimed.

In order to replace the incentive lost by basis reduction provision discussed above, the Housing Finance Agency finds that it is appropriate to use the authority provided for in the Housing and Economic Recovery Act of 2008 to designate projects involving the rehabilitations of structures of Historic Character as if they were in Difficult to Develop Areas (DDA) and thus eligible to utilize 130 percent of eligible basis as a factor in determining the adjusted eligible basis.

Conclusion

The changes provided in the HERA foster conditions for wider use of historic preservation as an affordable housing strategy. Preservationists should take advantage of this long-awaited opportunity by working with state housing agencies to ensure the inclusion of language in support of historic preservation as a preferred criteria in their QAP. For additional information on how you can help amend your state’s QAP, visit www.preservationnation.org or contact policy@nthp.org.

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Appendix

QAP Preservation-Related Scoring Excerpts

STATE	AVAILABLE POINTS/ TOTAL POINTS	DESCRIPTION	CONTACT INFORMATION
Arizona	40/331	15 points are available for projects consisting of one or more structures individually listed in the National Register or certified as contributing to a historic district or a project located within an area that has been zoned historic. 25 points are available for certified federal Historic Rehabilitation Tax Credit projects.	Arizona Department of Housing 110 W. Washington Street, Suite 310 Phoenix, AZ 85007 602-771-1000
Arkansas	10/140	For projects involving rehabilitation of existing structures.	Arkansas Development Finance Authority 423 Main Street, Suite 500 PO Box 8023 Little Rock, AR 72203 501-682-3339
Colorado	5	For rehabilitation of blighted buildings or locally or federally designated historic structures. Rehabilitation expenditures must be at least \$7,400 in hard costs per unit.	Colorado Housing and Finance Authority 1981 Blake Street Denver, CO 80202 303-297-2432
Delaware	5/105	5 points are awarded to developments utilizing federal Historic Rehabilitation Tax Credits.	Delaware State Housing Authority 18 The Green Dover, DE 19901 302-739-4263
Georgia	4/192	4 points are awarded for reuse of an entire existing building for which an application for federal Historic Rehabilitation Tax Credits has been or will be submitted.	Georgia Department of Community Affairs 60 Executive Park South, NE Atlanta, GA 30329 404-679-4940

STATE	AVAILABLE POINTS/ TOTAL POINTS	DESCRIPTION	CONTACT INFORMATION
Illinois	5/90	5 points are awarded for commitment of Historic Tax Credits.	Illinois Housing Development Authority 401 North Michigan Avenue, Suite 700 Chicago, IL 60611 312-836-5200
Indiana	5/150	At least 50 percent of total units must be located in eligible historic buildings. 2 points are awarded for developments listed in the National or State Register or that have received local landmark designation. 3 points are available to developments that use federal or state Historic Rehabilitation Tax Credits on the residential portion of the building(s).	Indiana Housing and Community Development Authority 317-232-0329
Iowa	15/387	Available for entire projects that are in or eligible for the National Register.	Iowa Finance Authority 2015 Grand Avenue Des Moines, IA 50312 800-432-7230
Louisiana	25/810 approximate points	Available for rehabilitation of a historic property damaged by Hurricane Katrina or Rita.	Louisiana Housing Finance Agency 2415 Quail Drive Baton Rouge, LA 70808 888-454-2001
Nevada	3/137 to 146 points	3 points are available for projects that contribute to the historic preservation, documentation, and/or use of cultural resources as determined by the SHPO. Projects are eligible to utilize 130 percent of adjusted eligible basis for those located in Qualified Census Tract and Difficult to Develop Areas.	Nevada Housing Division 1771 East Flamingo Road, Suite 103-B Las Vegas, NV 89119 702-486-7220
New Jersey	3/88	All projects must have at least 40 percent or more of the unit located within a historic building, a building being adaptively used, or a building located on a brownfields site. Projects can qualify for either: 1) 2 points for rehabilitation of historic buildings with an additional point available for those utilizing federal Historic Rehabilitation Tax Credits; 2) 2 points for projects which involve the adaptive reuse of a nonresidential building; or 3) 2 points for projects which are developed on a brownfields site.	New Jersey Housing Mortgage and Financing Agency 637 South Clinton Avenue PO Box 18550 Trenton, NJ 08650 609-278-7400
Ohio	2	Two points are awarded to projects that evidence use of Historic Rehabilitation Tax Credits. At least 75 percent of the total units must be located in eligible historic buildings.	Ohio Housing Finance Agency Office of Planning, Preservation, & Development 57 East Main Street Columbus, OH 43215-5135 614-466-0400
Pennsylvania	20/140	Up to 20 points are available for the amount of leveraging brought to support the development including equity from Historic Rehabilitation Tax Credits. Comparison will be made between total leveraging and total development costs (for preservation developments, assumed debt will not be included as a funding source nor added as a development cost for purposes of this calculation), with varying points awarded.	Pennsylvania Housing Finance Agency PO Box 8029 Harrisburg, PA 17105-8029 717-780-3948
Tennessee	1/279	A point is available for developments exclusively involving a structure(s) that is individually listed in the National Register or is a contributing structure in a registered historic district and the rehabilitation is completed in such a manner to be eligible for Historic Rehabilitation Tax Credits.	Tennessee Housing Development Agency 404 James Robertson Parkway, Suite 1200 Nashville, TN 37243-0900 615-741-2400
Vermont	No point system	Second-tier priority is given to projects exhibiting a unique design, such as a creative rehabilitation of a historic structure of statewide significance.	Vermont Housing Finance Agency PO Box 408 Burlington, VT 05402-0408 800-339-5866
Virginia	5	5 points are available for structures individually listed in the National Register or contributing structures in a registered historic district and the rehabilitation is completed in such a manner to be eligible for Historic Rehabilitation Tax Credits.	Virginia Housing Development Authority 601 S. Belvidere Street Richmond, VA 23220 877-843-2123
Wisconsin	25/391	25 points are available for developments that have financial participation, including federal and state Historic Rehabilitation Tax Credits, and are supported by a written conditional financial commitment.	Wisconsin Community Development Authority 201 W. Washington Avenue, Suite 700 Madison, WI 53703 800-334-6873