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# HFA Funding Strategies to Preserve Affordability, Maintain Financial Feasibility of LIHTC Properties Post-Year 15

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It does not take a law degree or a position in policy to see that maintaining otherwise expiring low-income housing tax credit (LIHTC, or HTC as we say in Texas) properties is important to housing finance agencies (HFAs) tasked with preserving affordability.

As it turns out, the Internal Revenue Code (IRC) Section 42 15-year initial compliance and subsequent 30-year extended-use periods present valuable opportunities for HFAs to help properties overcome impediments to preserving affordability.

This is particularly important post-Year 15, as the strategy with which a property addresses its unique needs can also have grave implications for financial feasibility and affordability up to and post-Year 30.

So what happens once the fear of recapture cedes and investors no longer reap tax benefits of the initial credits near and post-Year 15? How do LIHTC properties effectively proceed in this environment amid increasingly strenuous capital needs? The concern is quite valid if the argument posited in the 2012 report by Abt Associates Inc., and commissioned by the U.S. Department of Housing and Urban Development (HUD) is right in asserting that LIHTC properties are increasingly electing to remain affordable despite alternative opportunities. Unfortunately, addressing all of the above from a policy perspective is akin to bailing water from a well in the midsummer heat. It is most certainly not for the weak.

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Thus, this article seeks to address one particularly successful, yet often underused means of meeting the LIHTC needs, post-Year 15. You guessed it–through the specialized funding strategies provided by state and local HFAs.

## Matching Scope of Authority and Strategy to Needs

HFA Scope of Authority

The structures of HFA multifamily funding programs vary widely. Distinctions can be attributed in part to a particular state's housing priority needs, policies and environmental factors. Programs may also be difficult to navigate, as consolidating multiple funding sources often yield complex restrictions by which owners and properties must abide. It is also important to remember the funding initiatives discussed herein may require different implemented policies or may not even be within the scope of a particular HFA's authority.

Concerning authority, the need for affordable housing is so important that HFAs are often directed to fund special projects or initiate policies. In addition to authorizing a LIHTC issuing agency, state legislation may also set scoring preferences to guide how and where HFA efforts to finance housing can proceed. Considering the importance of housing in various economic sectors, it is also not surprising to see legislative oversight and review adding complexity. For example, gubernatorial review of qualified allocation plans is already the norm for states such as Missouri, Maryland and Texas. Texas, unlike many others, additionally reviews substantive changes to even related state administrative rules.

HFA Programs and Strategies Targeting Post-Year 15 Needs

Fortunately, there are HFA funding strategies and specialized initiatives designed to provide the favorable opportunities post-Year 15 properties need. The following conditions may all be present in properties seeking to use the effective, targeted HFA strategies to preserve LIHTC properties post-Year 15:

- The current ownership entity or a new partnership seeks to acquire the property, whether they be existing entities in the ownership structure or not; and
- Capital assistance or debt restructuring is needed to maintain the financial feasibility of the property nearing and post-Year 15 (as investor(s) or special limited partner may exit the ownership structure any time after Year 10 of the initial compliance period); and
- Owner are willing to preserve the affordability of the property (i.e., keep the units at designated levels); and
- The property may have concurrent moderate to substantive renovation cost needs in order to properly maintain its physical condition and marketability.

Some of the most active strategies working to address these conditions appear most prominently through the efforts of municipalities. One such example is the city of New York's Department of Housing Preservation and Development's Office of Development, Division of Preservation Finance. Long name short, the city runs a LIHTC portfolio preservation (Year 15) program to ensure financial viability and long-term affordability. Eligible properties include LIHTC state and city developments at or post-Year 15's initial tax credit compliance period. Flexible programming is also allotted to non-LIHTC and LIHTC properties consolidating for the purpose of increasing operational income and thus, ensuring financial feasibility.

Similarly, the city of Seattle's Office of Housing distributes a housing preservation guide whereby assistance is offered on a step-by-step basis. With a caveat to always check with the accountant and tax counsel first, a LIHTC Year 15 analysis guide walks

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affordable housing developers and owners through the detailed procedures required to preparing for and surviving after an investor takes their leave pre- and post-Year 15.

Lastly, the more common variations seek similar results through varying strategical means. HFA approaches to resyndicating, recapitalizing and restructuring offer opportunities to address LIHTC debt and capital needs, yet not always through the LIHTC. Instead, state housing finance agencies tend to implement housing policies and administer funding favoring financial feasibility and unit affordability overall. For example, the state housing finance agency and the HTC issuing authority for Texas, the Texas Department of Housing and Community Affairs, uses its multifamily finance division to multilaterally maneuver post-Year 15 preservation strategies. In Texas, these include preservation set-asides within concurrent loan program funding opportunities; at-risk set-asides and workout agreements designed to save properties from drowning in arduous debt servicing; bond and refinance dualities whereby layered funding permits properties to take advantage of favorable terms and rehabilitate as needed. Importantly, and as is common in agencies across the nation, supportive housing preservation opportunities offer alternative underwriting exemptions and award priorities.

## Moving Forward Post-Year 30?

In all, the level of oversight authority and multitude of funding strategies warrant deference to the importance of Year 15. Improving the means by which affordable housing developers and owners can maintain financial feasibility post-Year 15 appears impactful to preserving LIHTC properties. That said, the effect of Year 15 relative to the larger scheme of affordability may not be nearly as grave as it seems.

In the aforementioned 2012 report by Abt Associates Inc., and commissioned by HUD, "What Happens to Low-Income Housing Tax Credit Properties at Year 15 and Beyond?" researchers analyzed properties allocated credits between 1987 and 1994, as all had reached Year 15. An assessment of the HUD LIHTC database noted 3,699 of the 11,290 LIHTC properties studied were apparently no longer being monitored by HFAs post-Year 15. Still, researchers determined a "vast majority" of the unmonitored properties continued to be affordable with or without an extended-use agreement.

Nevertheless, the assessment also indicated approximately 7,221 of the properties studied received allocations subject to the IRC Section 42(h)(6)(D) extended-use period, making those that remain in the program subject to at least 30 years of affordability. Now 30 years later, affordable housing stakeholders and essentially all interested parties are understandably getting antsy. For the first time since 1990, properties that managed to remain financially feasible in the LIHTC and preserve affordability beyond Year 15 are completing their minimum extended-use, 30-year affordability requirements as early as 2020. With strategic luck, the aforementioned funding strategies may be just fortunate enough to preserve affordability post-Year 30. ❖

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