

Qualified Allocation Plans for the Neighborhood Homes Tax Credit

By Mark Shelburne, Novogradac, October 20, 2021

The time immediately after Congress enacts the [Neighborhood Homes Tax Credit](#) (NHTC) will be exciting: developers finding sites, syndicators securing equity investors, and everyone learning how the new program works. However, before anything can move past a preliminary stage, agencies will have to write qualified allocation plans (QAPs).

Adopting a QAP is not simply a good practice but will become a legal necessity. The [pending legislation](#) (both House and Senate) says the NHTC “dollar amount shall be zero for a calendar year unless the [NHTC] agency... allocates such amount pursuant to a [QAP]....”

Statutory Definition

The bills formally define what a QAP would contain. Most prominently, like with the [low-income housing tax credit \(LIHTC\) counterpart](#), agencies will establish selection criteria for what Congress understandably expects to be a competition. These factors must include:

- need in the area for new or substantially rehabilitated owner-occupied homes,
- capability of the developer, and
- the proposed development’s likelihood of creating long-term homeownership and
- expected contribution to neighborhood stability and revitalization, including the impact on neighborhood residents.

Similar to the federal definition of a QAP for LIHTCs, there is no further specificity on what each of these mean nor any limitation on using additional criteria. Agencies will have considerable discretion.

The plan must be available for public comment, although unlike with LIHTCs there won’t be a requirement for a public hearing. Agencies also will describe their procedure for identifying noncompliance and notifying the Internal Revenue Service (IRS).

Qualified Census Tracts

Only certain geographic areas will be eligible for NHTCs: a “qualified project” must be in a “qualified census tract” (QCT). Although it uses the same words, this designation is the not the same as is in [federal law for LIHTCs](#).

HUD will publish a list of QCTs and the Neighborhood Homes Coalition has [created a mapping tool](#), so it’s not necessary to fully understand the specifics. As a summary, the introduced legislation creates four different kinds of census tracts which qualify.

The list below is context for a limitation which will be carried out in QAPs: jurisdictions will be allowed to allocate no more than 20% of their NHTCs to developments in the third and fourth kinds of QCTs.

1. Median gross income does not exceed 80% of the area's, poverty rate not less than 130% of the area's, and median value for owner-occupied homes does not exceed the area median value.
2. Located in a city with a population of at least 50,000, a poverty rate that is not less than 150% of the area's, and has
 - a median family income which does not exceed the area's, and
 - a median value for owner-occupied homes that does not exceed 80% of the area's.
3. Located in a nonmetropolitan county and which has
 - a median family income which does not exceed the area's and
 - designated by the agency.
4. Certain types of disaster response and rehabilitation activities.

Standards and Reporting

Two other components of NHTC program administration likely will be a part of most QAPs, although could be in separate documents. First, agencies will have to promulgate standards for “construction quality” and “reasonable qualified development costs and fees.” Currently existing requirements for housing development may serve this purpose, such as a LIHTC QAP design appendix (as adapted to the type of construction).

The other component is agencies will need to report annually to the IRS on the following for each residence:

- census tract,
- year of allocation
- new or substantially rehabilitated,
- eligible basis,
- amount of NHTCs,
- its sales price, cost of the rehabilitation or, or already owner-occupied,
- income of the qualified homeowner, and
- other information the IRS may require.

Federal Guidance

Some practitioners may express an interest in, or even a perceived necessity of, IRS or Treasury guidance before moving forward. While understandable, especially considering their unexpected and problematic [interpretation of the average income](#) minimum set-aside, the NHTC law should stand on its own.

Furthermore, Congress and the Biden administration will be anxious to see results. More importantly, the [unmet demand for this housing](#) is tremendous. Achieving positive outcomes quickly will necessitate all parties getting started right away.

There are a few minor exceptions, such as the forms agencies use to report to the IRS, but none should delay the start of implementation.

Agency Administration

Depending on the law's effective date and first year of NHTC authorized, agencies may need to move very fast to enact QAPs (e.g., both could be 2022). Spending time planning ahead may be worthwhile.

First will be learning about the program, much of which is not described in this post. The credit calculation and how equity investment operates are particularly significant. Novogradac will create resources to assist with understanding in these areas.

Ideally the work will be done by professionals drawn from across an agency. The team should include experts in homeownership, community revitalization, LIHTCs and policy development. Staff for those usually are in different departments/divisions. Effective [input from stakeholders](#) will be invaluable, and outsourcing assistance also may be necessary.

The QAPs for LIHTCs would make a good starting point. Many aspects will be largely the same, such as

- the [overall structure](#) (set-asides, thresholds, selection and underwriting),
- [drafting considerations](#) and
- [creating a competition](#).

Conclusion

Everyone involved needs to accept the eventuality of unexpected circumstances, some of which will be problematic. Such is the price of trying anything new.

Novogradac professionals are available to help, including its new [NHTC Working Group](#) and [helping agencies with drafting](#).