



The Low-Income Housing Tax Credit Program in Texas:

Opportunities for State and Local Preservation Strategies

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Executive Summary

The Low-Income Housing Tax Credit (LIHTC) program is the largest affordable rental housing program in Texas and the United States. Close to 260,000 Texas families live in over 2,500 LIHTC properties across the state. As a result of weak preservation policies and programs, Texas has lost thousands of these affordable homes and, without sweeping policy and program changes, the state will lose thousands more.

This report (1) highlights why so many LIHTC properties in Texas are at risk of being converted to market-rate rental properties, (2) provides an overview of Texas' current preservation policies, (3) presents national best practices for LIHTC preservation; and (4) identifies strategies that Texas and cities could adopt to ensure the long-term affordability of LIHTC properties.

The LIHTC program, which provides federal income tax credits to fund the development of affordable rental housing, is administered at the state level. In Texas, the Texas Department of Housing and Community Affairs (TDHCA) administers the program and allocates the credits via an annual Qualified Allocation Plan. Existing LIHTC properties in Texas represent billions of dollars of taxpayer investment in critically-needed affordable housing in our communities. In 2018 alone, Texas allocated \$76.6 million in tax credits for developers of affordable housing across the state.

Where possible, these investments should be protected, particularly in areas where residents have access to important community amenities such as transit, jobs, safe neighborhoods, and good schools. Preservation is typically less expensive than new construction of affordable housing and allows lower-income residents to stay in their neighborhoods and maintain access to important community supports.

Major Findings: Threats to Preserving LIHTC Properties in Texas

Several policies and practices threaten the preservation of Texas's LIHTC inventory. These policy defects become particularly problematic in neighborhoods with high land prices or that are experiencing gentrification pressures. In Austin, for example, a large LIHTC property in the rapidly-gentrifying East Riverside corridor recently exited early from the program and at least two additional properties are at risk. Together, these three properties house more than 740 low-income families.

Specific threats to the preservation of Texas's LIHTC inventory include:

- 1. Texas has no LIHTC preservation strategy or program.** Neither TDHCA nor any local governmental entity in Texas has adopted a comprehensive strategy to guide the preservation of LIHTC properties, especially those most at risk of exiting the program.
- 2. Texas does not track properties at risk of exiting the LIHTC program.** TDHCA maintains a database of active LIHTC properties, but it fails to track information to determine which properties are at risk of exiting the program, such as whether a property has a right of first refusal, whether the property owner is committed to providing long-term affordability, and when the property is eligible to exit via the qualified contract process (see Section 1 of the report for a more thorough description of the qualified contract process).
- 3. LIHTC properties allocated tax credits in Texas prior to 2002 can opt out of their affordability restrictions through the qualified contract process after only 15 years in service.** The only exception is for properties that elected to provide a longer compliance period in their LURAs. The qualified contract process has never resulted in a preservation purchase in Texas. Through the qualified contract loophole, Texas has already lost 24 LIHTC properties—almost 4,000 units—with another 1,200 units in the process of exiting out. Another 834 pre-2002 properties could be eligible now or over the next few years to exit the LIHTC program.

4. **LIHTC property owners may be eligible to use the qualified contract process to exit early from the extended affordability terms in their LURAs.** It is unclear from Texas' Land Use Restrictive Agreements (LURAs) and TDHCA's rules whether owners who commit to affordability periods beyond 30 years can request a qualified contract and thus exit the program prior to the end of those commitments.
5. **Texas' right of first refusal (ROFR) policies contain multiple barriers to preservation.** While the right of first refusal is supposed to provide opportunities for qualified buyers (including nonprofit housing organizations, government agencies, and tenant groups) to purchase LIHTC properties up for sale, Texas' policies dilute the effectiveness of this important preservation tool. Most notably, ROFRs are unavailable for any of the state's 503 LIHTC properties with 4% credits, TDHCA awards only one point in its application criteria for properties that provide a ROFR, the ROFR notice period for new properties and many older properties is only 90 days, and the ROFR sale prices formula in some properties' LURAs results in an unfeasible purchase price for preservation.
6. **TDHCA's notice procedures for identifying preservation buyers are inadequate.** TDHCA notifies potential preservation buyers through a listserv—which prospective buyers must sign up for—and through posting the property for sale on the agency's website. TDHCA does not affirmatively market or actively seek out preservation buyers.
7. **Texas' affordability term for LIHTC properties is too short.** Texas has a 30-year affordability requirement for post-2002 LIHTC properties, which is much lower than national best practices. TDHCA incentivizes longer affordability terms through its application process, but even with these incentives the total affordability term is only 35 years.

Recommendations for Preservation Strategies in Texas

To address the threats to Texas' LIHTC housing inventory, Texas needs sweeping policy and program changes. Incorporating best practices from other states around the country, we recommend the following state- and local-level actions for improving the preservation of LIHTC properties in Texas. See Table 4 at the end of Section 7 for a complete summary of these recommendations.

1. **Understand what's at risk: Create a preservation database of vulnerable LIHTC properties.** Texas needs a comprehensive database that will allow preservation advocates to actively identify and intervene in LIHTC properties at risk of converting to market-rate rents or sliding into substandard condition. Successful examples of preservation database include those operated by Washington, D.C.'s Preservation Network, Chicago's Preservation Compact, the Colorado Housing Preservation Network, and the Community Economic Development Assistance Corporation in Massachusetts.
2. **Develop a preservation infrastructure: Organize a preservation stakeholder group and create staff positions in state and local housing agencies to support preservation efforts.** Texas should form a statewide stakeholder group—or city or regional stakeholder groups—focused on identifying at-risk LIHTC properties as well as creating and implementing strategies for the preservation of these properties. Successful LIHTC preservation efforts across the country have typically begun with the formation of a preservation stakeholder group with the express purpose of facilitating the preservation of affordable housing. The structure, makeup, and activities of preservation groups can take many forms, depending on the goals of the group and the political will of state and local governmental entities.
3. **Plan for preservation: Create a comprehensive preservation strategy.** One of the first tasks for the preservation stakeholder group should be to create a comprehensive preservation strategy for LIHTC properties. As part of developing the strategy, the stakeholder group will need to identify which types of properties to prioritize for preservation. Not all properties will be strong candidates. Whether a property is a good candidate for preservation can vary substantially between communities and will depend on both property and neighborhood characteristics, as well as local policy priorities.

4. Prevent early exits: Require or incentivize owners to waive their right to a qualified contract.

There are a number of discrete laws, policies, and procedures that the State of Texas and Texas cities can adopt to help close down the qualified contract loophole in the LIHTC program—and therefore prevent LIHTC owners from converting to market rents before their affordability terms have expired. These include: (1) requiring LIHTC property owners to waive their right to a qualified contract in exchange for obtaining TDHCA's approval of certain administrative actions; (2) amending the Texas Government Code to permanently disallow the qualified contract process for all LIHTC properties moving forward; and (3) requiring qualified contract applicants to meet with TDHCA's director or underwriters to discuss options for keeping the property affordable.

5. Support preservation buyers: Improve the effectiveness of rights of first refusals. Notice periods for properties seeking to exit the LIHTC program should reach all interested stakeholders and provide potential preservation buyers with adequate information and time to line up a preservation deal. TDHCA should also adopt a program and provide funding help tenant groups and qualified nonprofits exercise their rights of first refusal. Support for tenant groups should include support for tenant organizing, capacity building, and technical assistance.

6. Plan ahead: Incentivize and require longer affordability terms in new LIHTC properties. The Texas Legislature should amend the Texas Government Code and Administrative Code to require all new applicants to commit to a minimum 55 years of affordability, rather than 30 years currently mandated. Twenty-six states either require or incentivize LIHTC applicants to commit to affordability terms longer than the 30 years. Some states require perpetual affordability.

Summary of Recommendations for Preservation Strategies and Policies

Preservation Strategy/Policy	Lead Entity
1. Create a preservation database of vulnerable LIHTC properties.	TDHCA, cities, or a preservation stakeholder group
2. Organize a LIHTC preservation stakeholder group and create staff positions in state and local housing agencies to support preservation efforts.	TDHCA, cities
3. Create a comprehensive preservation strategy for LIHTC properties.	Preservation stakeholder group
4. Require or incentivize LIHTC owners to waive their right to a qualified contract.	
4a. Require LIHTC property owners to waive their right to a qualified contract in exchange for TDHCA's approval of certain administrative actions such as increasing rents, transferring the property to a new owner, and changes in partnership status.	TDHCA
4b. Adopt administrative policies discouraging early exits via the qualified process, including requiring qualified contract applicants to meet with TDHCA's director or underwriters to discuss options for keeping the property affordable.	TDHCA
4c. Issue administrative rules clarifying that properties with affordability terms longer than 30 years are ineligible to exit early from the LIHTC program through the qualified contract process.	TDHCA
4d. Amend the Texas Government Code to permanently disallow the qualified contract process for all properties that receive LIHTC allocations in the future.	Texas Legislature
4e. Require that a project applicant consent to a permanent waiver of the qualified contract process as a condition of obtaining the city's resolution of support or no objection.	Texas cities and counties
4f. Require that a LIHTC owner consent to a permanent waiver of the qualified contract process as a condition of obtaining new funding or other incentives from the city or county.	Texas cities and counties
5. Improve the effectiveness of rights of first refusals.	
5a. Amend the Texas Government Code and Administrative Code to require all future LIHTC applicants (both 4% and 9% projects) to commit to a right of first refusal as a threshold requirement. At a minimum, increase the points allocated in the Qualified Allocation Plan for 9% applicants that commit to a ROFR.	Texas Legislature and TDHCA

<i>Preservation Strategy/Policy</i>	<i>Lead Entity</i>
5b. Amend the Texas Government Code and Administrative Code to require a one-year ROFR notice period (instead of 180 days) for future LIHTC applicants.	Texas Legislature and TDHCA
5c. Adopt policies and procedures to ensure that robust and extensive notices of all activated rights of first refusal are provided to preservation stakeholders and prospective preservation buyers. Require owners to send written notice through certified mail to the city and county housing agencies and local housing authorities. Make concerted, proactive efforts to reach out to qualified entities both in Texas and nationally.	TDHCA
5d. Adopt a program and provide funding to help tenant groups and qualified nonprofits exercise their rights of first refusal.	TDHCA
5e. Adopt a clear policy in the Texas Government Code and the Administrative Code that caps the ROFR price at the minimum purchase price (as defined by federal law, 26 IRC Section 42(i)(7)) versus fair market value. Mandate that the sales price cannot exceed the ROFR price.	Texas Legislature and TDHCA
5f. For properties where a qualified entity has a contractual ROFR in the LURA and does not purchase the property via the ROFR, amend the Texas Government Code and Section 10.407(f)(3) of the Texas Administrative Code to provide that other qualified buyers have the opportunity to purchase the property at the ROFR price before the ROFR is considered satisfied.	Texas Legislature and TDHCA
6. Incentivize and require longer affordability terms in future LIHTC properties.	
6a. Amend the Texas Government Code and Administrative Code to require all future applicants to commit to a minimum 55 years of affordability.	Texas Legislature
6b. Provide opportunities in the QAP for 9% applicants to earn points for up to 55 years of affordability instead of the 35 years that the QAP currently offers each year.	Texas Legislature or TDHCA
6c. In exchange for obtaining the city's resolution of support or no objection or as a condition of any city funding or incentives, require LIHTC applicants to commit to providing an affordability term of at least 40 to 55 years.	Cities

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This report reflects the research and opinions of the individual authors only and does not present an official position of The University of Texas or the School of Law.

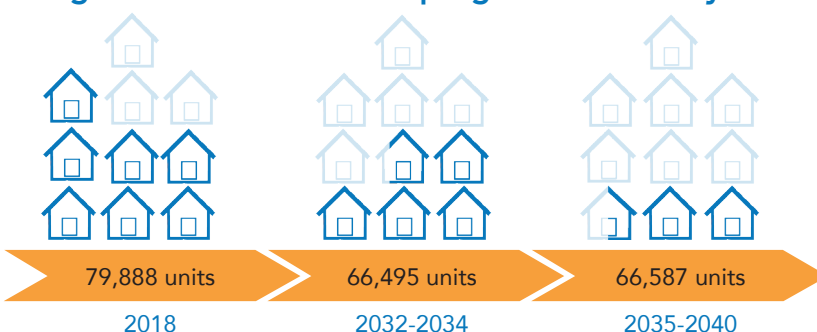
Introduction

The Low-Income Housing Tax Credit (LIHTC) program is by far the largest affordable housing program in Texas and the United States.¹ Close to 260,000 low-income Texas households live in LIHTC units.² Nationwide, the LIHTC program has helped create nearly three million units.³

Despite these gains, Texas is also seeing a wave of LIHTC units exiting the program and converting to market-rate rents. Texas has already lost 4,000 LIHTC units,⁴ and without intervention, thousands more will disappear from our state's affordable housing supply.

The biggest current threat to Texas' LIHTC inventory is a regulatory loophole—the qualified contract process—allowing certain properties to exit the program after just 15 years of providing affordable housing. In Texas, as many as 834 properties with 79,788 units are currently entitled to go through the qualified contract process, and assuming no additional restrictions, many of these properties could cease offering affordable rents as early as 2022.⁵ In just over a decade, the affordability terms of hundreds more LIHTC properties will begin to expire.⁶

Figure 1. Affordable rental units of current inventory eligible to exit the LIHTC program in Texas by 2040.⁷



Acronyms Used in This Report

LIHTC: Low-Income Housing Tax Credits

ROFR: Right of First Refusal

QAP: Qualified Allocation Plan

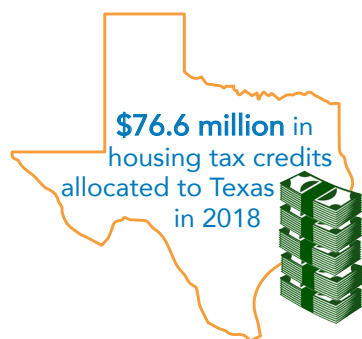
QC: Qualified Contract

TDHCA: Texas Department of Housing and Community Affairs

There are several important challenges to preserving these properties in Texas as a result of weak state and local preservation policies and programs. These include the qualified contract process, which allows properties to exit the LIHTC program prior to the end of their affordability commitments, and limited opportunities for preservation buyers to acquire LIHTC properties. Other challenges include weak incentives for owners to commit to longer affordability terms and market pressures in gentrifying communities.

The purposes of this report are to: (1) highlight why so many LIHTC properties in Texas are at risk of being converted to market-rate rental properties, (2) highlight past and present preservation strategies used in Texas, (3) present national best practices that cities and states around the country are utilizing to ensure the preservation of LIHTC properties, and (4) identify strategies that the State of Texas and Texas cities could adopt to ensure the long-term affordability of LIHTC properties.

SECTION 1: OVERVIEW OF THE LIHTC PROGRAM



The LIHTC program, which was created as part of the Tax Reform Act of 1986, provides tax credits for private investors to construct or rehabilitate affordable housing properties. The Internal Revenue Service (IRS) allocates tax credits to states each year based on population size. In 2018, Texas received an allocation of \$76.6 million in tax credits.⁸ The federal rules require each state to award tax credits pursuant to a Qualified Allocation Plan (QAP), which establishes the project criteria the state agency will consider during the application process.

There are two types of tax credits: 9% and 4% credits. Nine percent credits, which come with more subsidy (approximately 70% of the present value of the project's qualified basis) are allocated through a competitive process and are typically awarded to new construction and substantial rehabilitation projects. Four percent credits, which provide less subsidy (approximately 30% of the present value of the project's qualified basis), are currently non-competitive and are typically coupled with other federal subsidies, such as tax-exempt bonds. In Texas, 9% properties make up almost 80% of the current LIHTC inventory.⁹ The tax credits are claimed annually over a 10-year period following the date a project is placed in service.¹⁰

The Texas Department of Housing and Community Affairs (TDHCA) is responsible for implementing the LIHTC program in Texas, including awarding credits to project applicants. Each year, TDHCA issues a new QAP that sets forth baseline criteria that all LIHTC applications must meet. The QAP also establishes criteria by which 9% credit applicants can earn extra points, such as agreeing to longer affordability terms or providing tenant services. TDHCA enters into a Land Use Restrictive Agreement (LURA) with each LIHTC owner, which details—among other things—the rent restrictions, the affordability period, and whether a property has a right of first refusal (ROFR) for preservation buyers.

Table 1. 9% and 4% LIHTC awards in Texas

	9% properties	4% properties
All tax credits awarded since 1990	2,012 (79%)	529 (21%)
Tax credits awarded in 2018	72 (71%)	29 (29%)

Affordable Rents

The Internal Revenue Code (IRC) establishes rents and income targeting for LIHTC properties. In order to qualify for LIHTC credits, an owner must satisfy one of three income tests at the property.¹¹ The 40/60 test requires owners to set aside at least 40% of the units for tenants who earn no more than 60% of the median area income.¹² Alternatively, in the 20/50 test, the project developer must set aside at least 20% of the units for tenants who earn no more than 50% of the median area income.¹³

The 2018 Consolidated Appropriations Act added a third option for satisfying income requirements that allows development owners to average tenants' income.¹⁴ This test is satisfied if at least 40% of units are occupied by tenants who have an average income that is no more than 60% of median area income.¹⁵ Under all three tests, the rent for the affordable units cannot exceed 30% of the income limits for the unit based on the test selected, and the 30% cap on rent includes an allowance for utilities.¹⁶

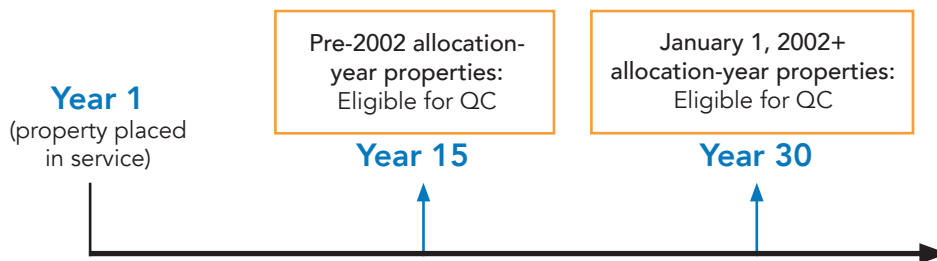
Affordability Terms and the Qualified Contract (QC) Loophole

Federal law requires 30 years of affordability for all LIHTC properties awarded tax credits on or after January 1, 1990, although projects may be eligible to exit earlier, as discussed below. The first 15 years that the property is in service is called the compliance period. During this time, the IRS can "recapture" tax credits if it finds that a development is noncompliant with LIHTC rent restrictions, maintenance requirements, or

other tenant protections. The second 15-year period is called the extended use period. At the end of the 15-year compliance period, the owners no longer have to report to the IRS, and in Texas, the responsibility for monitoring and enforcing compliance shifts to TDCHA for the remainder of the extended use period. We refer to the total number of years that a property is affordable as the “affordability period.”

Absent stronger state regulations, properties can exit the LIHTC program after only 15 years in service through the qualified contract (QC) process.

In Texas, only properties allocated tax credits before 2002 are able to go through the QC process at year 15. After the end of the 14th year of the compliance period, owners interested in exiting the program can request that TDHCA procure a QC.¹⁷ TDHCA has one year to find a qualified buyer who will purchase the property at the qualified contract price and continue to operate the property as an affordable LIHTC property.¹⁸ TDHCA markets LIHTC properties for sale through the QC process on its Multifamily Preservation Clearinghouse website¹⁹ and through an email to its prospective buyers list. If found, the QC buyer must keep the property in the LIHTC program through the expiration of the affordability period in the LURA, and there are no other opportunities to apply for a QC.²⁰ If the agency is unsuccessful in securing a preservation buyer at the QC price, the owner may exit the LIHTC program, with the affordable rents phased out over a three-year period called the “decontrol period.”²¹



The QC process has been identified as a serious threat to the preservation of LIHTC properties across the country.²² In particular, the federal formula for setting the QC price frequently leads to a sale price that is higher than the fair market value, making it extremely difficult for preservation buyers to secure sufficient funding to purchase these properties.²³

In response, many states, including Texas, have implemented state policies disallowing or discouraging properties from exiting via the QC process at year 15. In 2001, the Texas Legislature adopted a law requiring all LIHTC properties to meet a minimum 30-year affordability period.²⁴ Under TDHCA rules, properties allocated credits in 2002 or later are ineligible to go through the QC process until the property has been in service for 30 years.²⁵

Option to Extend Affordability Periods

As discussed above, federal law requires all LIHTC properties allocated tax credits on or after January 1, 1990, to commit to a 15-year extended use period following the 15-year compliance period, for a total of 30 years of affordability. In Texas, the the affordability period can be longer than 30 years if development owners elect to provide additional years of affordability for points in the competitive 9% QAP scoring process. Since 2002, TDHCA has offered varying numbers of points for properties that make this election. Prior to 2002, TDHCA did not offer points for development owners agreeing to provide an affordability period beyond 30 years, although previous QAPs did use longer affordability periods as tie breakers in its final rankings (See Table 2).

Table 2. Texas QAP Points for Longer Affordability Period

Tax Credit Allocation Year*	# of points	Affordability Period (years)**
2013-2017	2	35
2005-2012	2	35
	4	40
2004	5	35
	6	40
2002-2003	5	35
	12	40

*2001 and earlier: TDHCA used extended affordability as a tie-breaker factor for final rankings.

**Affordability Period means total number of years of affordability, including the 15-year compliance period.

Right of First Refusal (ROFR)

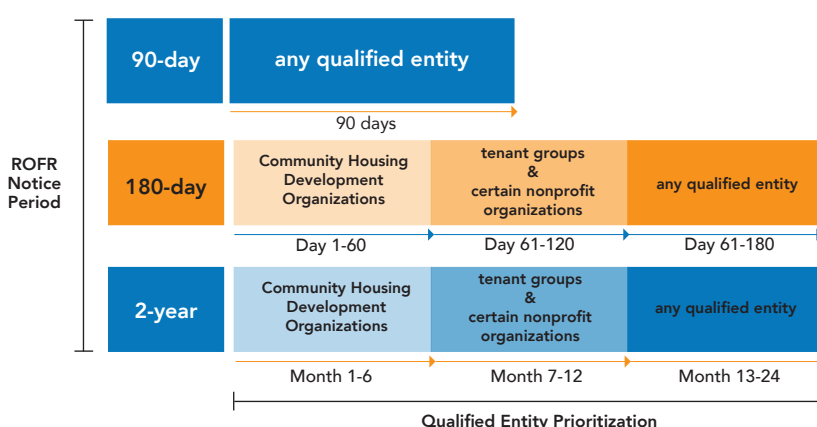
Texas provides extra points to 9% LIHTC property owners who commit to providing a right of first refusal (ROFR) to a “qualified entity” when the property is sold after the end of the compliance period.²⁶ The ROFR allows preservation buyers the opportunity to purchase a LIHTC property before an owner can enter into a contract with a nonqualified third-party buyer. If a LURA includes a ROFR provision, owners must also satisfy the ROFR before going through the QC process.²⁷

“Qualified entity” is defined under federal law and includes tenant groups, resident management corporations of a LIHTC building, nonprofit organizations with an exempt purpose of fostering low-income housing, and government agencies.²⁸ Texas uses a tiered approach to prioritize qualified entities during the ROFR period (see Figure 2).

Development owners also have the option to identify a specific qualified entity to purchase a LIHTC property through a contractual ROFR.²⁹ If the selected qualified entity chooses not to purchase the property, the ROFR is satisfied and other qualified entities do not have the opportunity to purchase the property at the ROFR price.³⁰

ROFR notice periods range from 90 days to two years, depending on the tax credit allocation year and TDHCA policies in place at that time.³¹ Each property's LURA should be reviewed to confirm the ROFR period.

Figure 2. Qualified entity priority tiers during Texas ROFR periods



As a result of legislation passed in 2015, owners with either a 90-day or 2-year ROFR may amend their LURAs to have a 180-day ROFR notice period.³² As of August 2018, 47 properties have amended their 2-year notice period to a 180-day notice period, reducing opportunities for a successful preservation purchase of these properties.³³

When an owner subject to a ROFR in its LURA decides to sell a LIHTC property, the owner must notify TDHCA and the tenants of the owner's intent to sell.³⁴ Through the ROFR process, TDHCA takes several steps to help procure a preservation buyer if the owner is unable to secure a qualified entity buyer outside of TDHCA's process.³⁵ First, TDHCA must notify any qualified entity identified by the owner as having a contractual ROFR in the LURA. If there is no contractual ROFR or the entity no longer exists, TDHCA must then market the property on its website.³⁶ At this time, TDHCA also contacts persons who sign up for notices on a contact list maintained by the Department. Qualified entities must contact TDHCA to be placed on the buyer list.

If TDHCA does not find a qualified entity to purchase the property during the ROFR period, the property owner may sell the property to a nonqualified buyer—or apply for a qualified contract to exit the LIHTC program, assuming the property is beyond the compliance period and the owner is otherwise eligible. Unless the property has exited the LIHTC program through the QC process, the new owner (even if a nonqualified buyer) must maintain all rent restrictions and tenant protections required by the LIHTC program through the expiration of the affordability period.

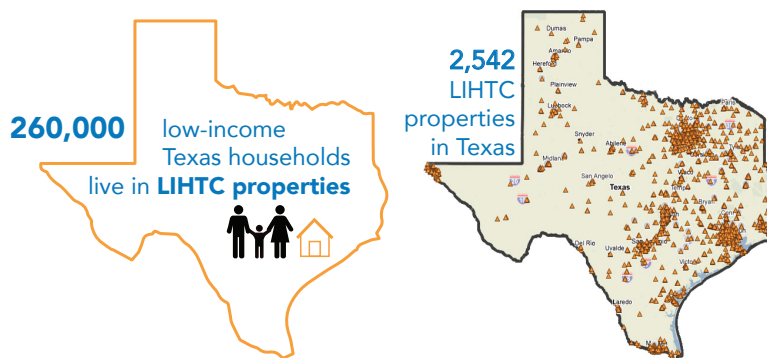
TDHCA's regulations contain several exceptions to the ROFR process, such as sales of a limited partner's interest or sales to an entity under the control of the current owner.³⁷

IRC and TDHCA regulations provide the parameters for calculating the ROFR price, which is contained in each property's LURA.³⁸ In Texas, depending on the year of the LURA, the ROFR price is based on the "Fair Market Value" or the "Minimum Purchase Price."³⁹

- "Minimum Purchase Price" is defined in the IRC as "outstanding indebtedness plus applicable state, federal, and local taxes."⁴⁰
- The "Fair Market Price" is based on an appraisal or "an executed purchase offer that the Owner would like to accept."⁴¹

SECTION 2: THE IMPORTANCE OF PRESERVATION

Existing LIHTC properties in Texas represent billions of dollars of taxpayer investment in our communities and important affordable housing assets. Where possible, these investments should continue to benefit lower-income residents, particularly in areas where residents have access to important community amenities such as transit, jobs, safe neighborhoods, and good schools.



The State of Texas has recognized the need for preserving its LIHTC assets. In 2001, the Texas Legislature passed a law reforming and restructuring TDHCA, which included a number of strong preservation mandates.⁴² The law requires TDHCA to develop and implement a program to preserve affordable housing, including: (1) maintaining data on "housing projected to lose its affordable housing status" and (2) developing "policies necessary to ensure the preservation of affordable housing in this state."⁴³ The same bill requires TDHCA to adopt policies that keep the rents affordable at LIHTC properties "for the longest period that is economically feasible."⁴⁴

Preserving existing LIHTC properties provides a number of important social and economic benefits:

- **Preservation is typically less expensive than constructing new affordable housing.** According to the U.S. Department of Housing and Urban Development, preservation typically costs one-half to two-thirds the cost of new construction.⁴⁵
- **Preservation allows vulnerable residents to stay in their homes and neighborhoods and maintain access to important community supports.** Low-income households who are displaced are cut off from key relationships they have developed over time, such as trusted relationships with day care providers and health care clinics. Displaced families are also at a greater risk of moving to neighborhoods with a higher concentration of poverty, lower school performance, and higher unemployment.⁴⁶ This is particularly the case in communities where market-rate rents are too high for displaced residents to find replacement accommodations.
- **Preservation reduces student mobility and disruptions in academic performance.** The residential displacement that occurs when an affordable property shuts down can have a highly destabilizing impact on schools. In Austin, for example, the closure of one affordable property threatened the relocation of approximately 100 elementary school children who attended nearby Sanchez elementa-

ry.⁴⁷ Sanchez elementary, like many other East Austin schools has experienced dropping enrollment for several years, forcing Austin Independent School District to consolidate school campuses. The loss of affordable housing is cited as one of the major drivers of this change.⁴⁸ Students who are displaced and forced to change schools face lower academic success and increased risk of dropping out of school.⁴⁹

SECTION 3: COMPONENTS OF COMPREHENSIVE PRESERVATION STRATEGIES

In many areas of the country, affordable housing advocates, LIHTC developers, and government agencies have been working together to form comprehensive strategies for identifying which LIHTC properties are the best candidates for preservation, as well as identifying the most effective preservation tools.

Targeting policies and resources towards the preservation of every LIHTC property is not a viable strategy and does not always best serve the needs of vulnerable tenants and communities. Some LIHTC properties are not candidates for preservation because of high rehabilitation costs from deferred maintenance and the advanced age of the property. Other properties may not be strong candidates because they are located in areas where market rents are the same or very close to LIHTC rents. The loss of protected LIHTC units from areas where market-rate rents are affordable does not pose the same type of risks for residents and communities as does the loss of units in wealthier and gentrifying neighborhoods.

Texas has lost 4,000 LIHTC units and could lose up to 80,000 units by 2022.

Preservation efforts must also consider the need to further fair housing opportunities. Subsidized affordable housing in Texas has historically been concentrated in racially and economically segregated neighborhoods. LIHTC resources must be allocated in a way that does not perpetuate housing segregation and does not limit low-income residents' access to strong schools, safe neighborhoods, and good jobs.

Components of an Effective Preservation Strategy

- 1 Data collection and analysis
- 2 Comprehensive approach
- 3 Stakeholder coordination
- 4 Identification of funding sources

A preservation strategy should ideally include:

1. **Data collection and analysis.** An effective preservation strategy must start with good data. Stakeholders must have a basic understanding of the local LIHTC inventory, which properties are most at risk of exiting the LIHTC program, and which properties make the best candidates for preservation.
2. **Comprehensive approach.** Preservation efforts are most effective when they proactively address the need for preservation on a community-wide scale, utilizing a diverse portfolio of preservation policies and tools. Preservation strategies should include numerical preservation targets and a methodology for determining which types of properties will be targeted by preservation resources and policies.
3. **Stakeholder coordination.** There are many stakeholders in LIHTC preservation efforts, including state and local government agencies, nonprofit organizations, tenant groups, and for-profit developers. The efforts of each of these stakeholders should be coordinated in order to avoid duplication of efforts and unhelpful competition among preservation buyers. Collaboration among stakeholders also builds important political leverage for the adoption of preservation policies.

4. **Identification of funding sources.**⁵⁰ Properties may require substantial rehabilitation or be located in competitive housing markets. In these cases, identifying additional private and public funding sources is vital to successful preservation deals.

Affordable housing preservation has been a focus of advocates and policymakers for decades, leading to the identification of a large and diverse set of tools for preserving LIHTC properties. Section 6 identifies the tools that have been used to successfully preserve LIHTC properties in other parts of the country. Section 7 then recommends both state and local tools for preserving LIHTC properties in Texas.

SECTION 4: THREATS TO THE PRESERVATION OF LIHTC PROPERTIES IN TEXAS

Several Texas policies leave LIHTC properties vulnerable to exiting the program—and limit the ability of preservation buyers to purchase properties and keep affordability restrictions in place. These policies include allowing a large subset of LIHTC properties to use the QC process to exit the program after only 15 years in service as well as a general failure of state and local entities to track LIHTC properties that are most at risk of converting to market-rate apartments.

These policy defects become particularly problematic in neighborhoods with high land prices or that are experiencing gentrification pressures, where market-rate rents can be far above the restricted rental rates required by the LIHTC program. Like many types of affordable housing developments, LIHTC units have historically been concentrated in low-income communities of color. Across Texas, several of these neighborhoods are being revitalized and low-income residents are experiencing the displacement often associated with gentrification. LIHTC property owners in gentrified communities have great incentive to exit the LIHTC program as soon as possible. The following describes the most significant threats to preserving Texas LIHTC properties.

Threats to LIHTC Property Preservation in Texas

1. Texas has no LIHTC preservation strategy or program.
2. Texas does not track properties at risk of exiting the LIHTC program.
3. LIHTC properties allocated tax credits prior to 2002 can opt out of affordability restrictions through the qualified contract process after only 15 years.
4. LIHTC properties may be eligible to use the QC program to exit early from additional affordability restrictions in their LURAs.
5. Texas' right of first refusal policies contain multiple barriers to preservation.
6. TDHCA's notice procedures for identifying qualified preservation buyers are inadequate.
7. Texas' affordability term for LIHTC properties is too short.

1. **Texas has no LIHTC preservation strategy or program.**

As discussed in Section 3, incorporating a comprehensive preservation strategy is a vital part of successful efforts for preserving LIHTC and other subsidized affordable housing. Despite the legislative mandate to take necessary steps to preserve affordable rental housing,⁵¹ TDHCA does not have a comprehensive program or strategy for preserving LIHTC properties that are at risk of exiting the program. Nor has any local governmental entity in Texas adopted a strategy to guide LIHTC property preservation.

2. **Texas does not track properties at risk of exiting the LIHTC program.**

Neither TDHCA nor local governmental entities in Texas are tracking LIHTC properties that are at risk of converting to market-rate apartments. While TDHCA maintains a database of active LIHTC properties, it includes only basic information and is not, by itself, useful for tracking at-risk properties. Local governmental entities are also not tracking the necessary data for the preservation of LIHTC properties, such as when compliance and extended use periods expire, which properties have ROFRs, and whether the property is owned by an entity that is more likely to exit the LIHTC program.

3. **LIHTC properties allocated tax credits prior to 2002 can opt out of affordability restrictions through the qualified contract process after only 15 years.**

As discussed above, Texas allows properties allocated tax credits prior to 2002 to request a QC and exit the program after only 15 years. The only exception is for 9% properties that elected to provide a compliance period longer than 15 years during the competitive QAP scoring process.

The option for pre-2002 properties to go through the QC process at year 15 is highly problematic for preserving these properties. **As of November 2018, the QC process has never resulted in a preservation purchase in Texas, and Texas has already lost 24 LIHTC properties—almost 4,000 units—through the QC process.** An additional 5 properties—over 1,200 units—are currently in the one-year QC notice period and will likely be exiting the LIHTC program by April 2019.⁵² Another 834 LIHTC properties were allocated credits prior to 2002 and are potentially entitled to exit the program through the QC process after 15 years of service.⁵³ Almost all of these properties have already been in service for 15 years.

One of the main preservation barriers imposed by the QC process is the formula for calculating the QC price, which is regulated by federal law. As a result of this formula, the QC price is usually higher than the fair market value. As of July 2018, every property that TDHCA was marketing for sale through the QC process was listed at a price higher than the property's fair market value. This pricing pattern has been consistent since TDHCA began tracking QC requests in Texas in 2010.⁵⁴ The following are a handful of examples showing the severe discrepancy that typically exists between the QC price and appraised value of LIHTC properties:

- In 2015, Windsor Pointe Townhomes, a 192-unit complex in College Station, exited the LIHTC program after being listed for a QC price of almost **\$16 million**. The property's appraised value was just over **\$10 million**. This was a particularly troubling conversion as long-time, low-income tenants were displaced from one of the most affordable complexes in the city, allowing the for-profit developer to convert the property to luxury student townhomes.⁵⁵
- In 2018, Fort Branch at Truman's Landing, a 250-unit complex in Austin, exited the LIHTC program after TDHCA failed to procure a QC. The property was listed for sale for over **\$24 million**, while the fair market value was **\$21 million**.
- Rosemont at Pecan Creek, a 264-unit complex in Denton, is currently listed for just over **\$23 million**. The appraised market value of that apartment complex is just over **\$17 million**. The one-year QC period expires on March 1, 2019.
- Primrose at Sequoia Park, a 250-unit apartment complex in Denton, is currently listed for just under **\$19 million**. The appraised market value is just over **\$16 million**. The one-year QC period expires on March 29, 2019.
- Primrose Oaks, a 250-unit apartment complex in Dallas, is currently listed for just over **\$21 million**. The appraised market value is under **\$14 million**. The one-year QC period expires on April 4, 2019.

These cases highlight how the QC price makes preservation close to impossible. Because it is unlikely that the QC price will change without federal intervention, Texas should make every effort to disincentivize the use of the QC process and to preserve LIHTC properties prior to the owner's application to TDHCA for a QC.

4. **LIHTC property owners may be eligible to use the QC process to exit early from additional affordability restrictions in their LURAs.**

As discussed previously, TDHCA incentivizes owners to commit to longer affordability periods as either a tie-breaker item or for points in the 9% competitive QAP scoring process. However, the law is unclear as to whether properties that have committed to a longer affordability term through their applications and in their LURAs (such as a 40-year affordability term) are eligible to exit the LIHTC program through the QC process prior to the expiration of the extended affordability period.⁵⁶ Additionally, TDHCA's LURAs are inconsistent with some LURAs clearly disallowing and others presumably allowing the QC after 30 years in service. **For properties allocated tax credits after 2001, owners may be eligible to exit the LIHTC program through the QC process after 30 years in service, despite a commitment in their LURAs to affordability beyond 30 years.**

This ambiguity in the law also extends to pre-2002 LIHTC properties that committed to longer affordability terms in their applications and LURAs. These properties may be eligible to exit the LIHTC program through the QC process after only 15 years in service, despite receiving points for committing to a longer affordability term.

For example, the owner of a 2004 allocation-year property who earned extra points for a 40-year affordability period may be able to request a QC after only 30 years. And a 2000 allocation-year property whose owner received extra points for a 40-year affordability period may be able to exit early through the QC process after only 15 years in service. As discussed further below, some other states require property owners committing to a longer affordability term to explicitly waive their rights to participate in the QC process. Texas has not required a similar waiver.

5. **Texas' right of first refusal policies contain multiple barriers to preservation.**

Rights of first refusal—which give qualified buyers the right to purchase a LIHTC property when it comes up for sale and also before a property goes through the QC process—can serve as a strong preservation tool. Texas, however, has multiple policies that dilute the effectiveness of ROFR. As a result, ROFRs offered to make a development eligible for the QC process have **never resulted in a successful preservation purchase** in Texas. To date, 9 of the 24 properties in Texas that have exited the LIHTC program through the QC process had ROFRs.

We have identified several major shortcomings to Texas' ROFR process:

- ROFRs do not apply to Texas's 503 LIHTC properties with 4% tax credits.⁵⁷
- For properties with a contractual ROFR, if the qualified entity designated in the LURA does not purchase the property, no other qualified entity has the opportunity to purchase the property at the ROFR price.⁵⁸
- Since 2005, TDHCA has awarded only one point in the QAP selection criteria for properties with a ROFR. The QAPs from 1999 to 2004 allowed applicants to earn five points for electing to provide a ROFR in their LURA.
- The 90-day notice ROFR periods are far too short for even sophisticated housing organizations to successfully secure funding and make an offer on a property. The 180-day period is an improvement but is still too short for situations where a preservation deal will require collaboration among multiple stakeholders or require 4% tax credits to re-syndicate the property.
- ROFR prices based on fair market value are too high for qualified buyers to take advantage of, especially when the property is located in a strong housing market and the fair market value takes into consideration the property's eligibility to subsequently exit the LIHTC program through the QC process. This issue doesn't impact all properties with ROFRs, and in recent years all ROFR prices have been calculated using the Minimum Purchase Price. However, many older properties have a fair market value ROFR, making it extremely difficult to preserve the property. For examples, see the case studies in Section 5.

- For properties with a ROFR price defined as the Minimum Purchase Price, TDHCA allows the property to be sold for greater than the Minimum Purchase Price if a qualified entity is willing to pay more. This can lead to qualified entities bidding off each other and the property being sold to the highest bidder rather than a preservation buyer with the strongest track record of serving low-income tenants. TDHCA's 2019 Draft Multifamily Rules would codify this policy by allowing owners to accept a higher price where, "sequential negotiation created by statute yields a higher price."⁵⁹

6. TDHCA's notice procedures for identifying qualified preservation buyers are inadequate.

TDHCA provides notice about properties available for sale via a ROFR or the QC process by posting a notice on its website and via a listserv, which qualified buyers must sign up for. These notification portals are insufficient at reaching a broad pool of prospective preservation buyers. TDHCA does not take any other action to market the properties or contact potential preservation buyers. For example, TDHCA does not provide direct notice to the applicable municipality, local housing department, or local housing authority when a property is going through the ROFR or QC process. Additionally, TDHCA does not market properties for sale during ROFR or QC periods to national nonprofit affordable housing developers that may have the higher capacity to finance a preservation deal.

7. Texas' affordability term for LIHTC properties is too short.

Texas' 30-year affordability requirement for post-2002 LIHTC properties is too short given the state's affordable housing needs and is not in keeping with national best practices. TDHCA has entered into LURAs with affordability terms of up to 55 years, and there are many examples nationally of affordability periods well beyond 30 years (See Section 6).

While applicants can earn points in the application process for providing a longer affordability term, the most recent two QAPs in Texas provided only 2 points for electing to provide a longer affordability term, and the extension was for only 5 years, for a total affordability term of 35 years. TDHCA has completely removed any incentive to elect an affordability period beyond 35 years.

SECTION 5: CASE STUDIES FROM AUSTIN'S EAST RIVERSIDE CORRIDOR

The case of three LIHTC properties along Austin's East Riverside corridor highlights the shortcomings in Texas' administration of the LIHTC program relating to promoting the preservation of LIHTC properties, especially in areas with strong housing markets. The East Riverside corridor is a gentrifying, higher-opportunity area located east of IH-35, just two to three miles from Austin's Central Business District. The area, which is a major transit corridor for the city, has seen rapid redevelopment in the past several years, including the development of Oracle's Austin campus.

Preservation Lessons Learned from Three Texas Case Studies

- Qualified contract prices—and often right of first refusal prices—are too high to allow preservation buyers to purchase LIHTC properties.
- Short ROFR periods do not provide preservation buyers with enough time to secure necessary funding.
- Some LURAs for LIHTC properties are noncompliant with the Texas Government Code's affordability-term requirements.
- Early identification and intervention with properties at risk of exiting the LIHTC program is critical to successful preservation efforts. Once a property enters the QC process, it is typically too late to preserve the property.
- Texas needs stronger long-term strategies for preserving LIHTC properties.

Country Club Creek Apartments: Allocated tax credits in 1995, this property has 212 affordable units. Although the property should have remained affordable until 2026—30 years after the property was placed into service—the property was able to exit out of the LIHTC program in 2017 through the QC process. Country Club Creek had a 90-day, fair-market-value ROFR, and the property was appraised and listed for sale on TDHCA's website at \$22.4 million. After the ROFR period expired without a preservation buyer, the property entered the QC process. TDHCA listed the property on its website with a QC price of \$24 million—a price well above the fair market value of the property with the affordable housing restrictions in place. At least two preservation groups investigated purchasing the property during the QC period, but the high QC price made financing unworkable. Ultimately, no preservation buyers stepped forward to purchase the property at the QC price, and so the units will be converted to market rate by 2020.

Country Club Creek

\$22.4 million ROFR price

212 units

Allocation year **1995**

Completed QC process in 2017 and has exited LIHTC program. Affordable rents will phase out by 2020

Paradise Oaks Apartments: Allocated tax credits in 1994, this property has 248 affordable units and should remain affordable through 2026—30 years after the property was placed in service. Paradise Oaks has a 90-day ROFR in its LURA that is based on the fair market value of the property and went through a ROFR period from September through November 2018. The property was listed on TDHCA's website for sale to qualified nonprofits and tenant groups for a ROFR price of \$31 million. This price was based on a purchase and sale agreement between the current owner and a prospective for-profit, non-preservation buyer, and is substantially above the fair market value of the property when taking into account the affordability restrictions remaining in place. Preservation buyers in Austin were unable to finance a preservation deal at the ROFR price, and the ROFR was satisfied on November 9, 2018. Since Paradise Oaks is a pre-2002 property and

not subject to the 30-year minimum affordability term, the current owner is eligible to request a QC from TDHCA. Alternatively, if the sale goes through, the new owner will be eligible to apply to TDHCA for a QC following another ROFR period.⁶⁰ Given the location of this property and the sales price, it is likely that Paradise Oaks will go through the QC process and could exit the LIHTC program as early as spring of 2020.

Towne Vista Apartments: Allocated tax credits in 2002, Towne Vista has 280 affordable units and, because of a change in Texas law (discussed above in Section 1), should be ineligible for the QC process until 2033, which is 30 years after the property was placed in service. However, a local tenant advocacy group called ¡BASTA!, which works with tenants at Towne Vista, heard from tenants that corporate management was informing them of its possible plans to “opt out” of its affordability requirements at the end of 2018, which coincides with the end of Towne Vista’s 15-year compliance period. Although the Texas Government Code provides that this property should be ineligible to exit the LIHTC program through the QC process until it has been in service for 30 years, housing advocates learned that the property’s LURA allows the owners to apply for a QC after only 15 years, in violation of state law.

Paradise Oaks Apartments

\$31 million ROFR price

248 units

Allocation year **1994**

ROFR period expired in November 2018. Property will likely sell to a non-preservation buyer. New buyer will have to go through ROFR again, but is likely to try and exit the LIHTC program through the QC process.

Towne Vista Apartments

No ROFR

280 units

Allocation year **2002**

Early intervention has saved the property for another 14 years. The LURA mistakenly allows the property to go through qualified contract process after 15 years of service, which state law prohibits. TDHCA has confirmed that 2002 properties are ineligible for the qualified contract process until year 30.

We brought this discrepancy to the attention of TDHCA, which has agreed to enforce the Texas Government Code, although it will not be requiring owners to amend these incorrect LURAs. In a notice to the LIHTC listserv on October 10, 2018, TDHCA took a strong stance in favor of long-term preservation and announced that, “as stated in 10 TAC Section 10.408(b), Development Owners who received an award of credits on or after Jan. 1, 2002, are not eligible to request a QC prior to the 30 year anniversary of the date the property was placed in service.” The notice specifies that this policy will “guide TDHCA staff’s handling of all QC requests regardless of the implications of language in a property’s LURA.” Towne Vista will remain affordable for at least 15 more years. Because of Towne Vista’s location in East Austin and the fact that the property does not have a ROFR, it is likely that the property will exit the LIHTC program in 2032 when it becomes eligible to go through the QC process.

These three properties house 740 low-income families within a 1.5 mile distance. The families who are displaced will be unlikely to find replacement housing in the area, given the on-going redevelopment pressures and housing appreciation along the corridor. To replace these units in new developments at similar rent levels would cost at least \$70 million in public subsidy, not taking into consideration the rising cost of land along the East Riverside corridor.

These cases highlight the need for a long-term preservation strategy for Texas LIHTC properties. In the case of Country Club Creek, preservation advocates and many local qualified nonprofit buyers were unaware that the owners were considering exiting the LIHTC program until the owner had already applied for the QC process, at which point it was too late to preserve property. In the case of Paradise Oaks, preservation advocates and qualified nonprofit buyers were unaware of the owner’s intent to sell the property until after the 90-day ROFR period had begun, giving them inadequate time to secure financing and make an offer

on the property. Conversely, advocates became aware of Towne Vista’s potential exit more than six months prior to the end of the property’s compliance period. This advanced, albeit unintentional, notice gave tenant advocates the opportunity to find the mistake in the LURA and bring that to TDHCA’s attention. The advance notice has also given advocates and potential preservation buyers the opportunity to begin thinking, well in advance, how this property might be preserved for long-term affordability in a rapidly gentrifying neighborhood.

SECTION 6. NATIONAL BEST PRACTICES FOR LIHTC PRESERVATION STRATEGIES

This section discusses model strategies and policies that have been adopted in cities and states across the country to preserve LIHTC properties—as well as newer innovations that have not yet been adopted but should be considered for inclusion in a comprehensive LIHTC preservation strategy. Texas should carefully assess each of these tools and strategies in crafting its own comprehensive preservation strategy.

These best practices represent years of work by preservation groups to identify and develop the most effective preservation tools. Preservation groups have seen enormous success with these tools, which have been responsible for saving thousands of affordable units. The advocates who developed these tools are enthusiastic about sharing these practices as well as lessons learned along the way to assist other cities and states with crafting their own successful affordable housing preservation strategies.

1. Create a preservation database of Low-Income Housing Tax Credit properties.

The first key step in developing a comprehensive preservation strategy is creating a database that will allow preservation advocates to actively track properties at risk of converting to market-rate rents and to decide which properties are good candidates for preservation. As the National Housing Preservation Network notes, “[w]ithout sufficient data to understand which properties are most at risk, it’s impossible to target resources effectively or be prepared to act when a property is threatened.”

<p>Colorado: Nearly 5,000 affordable housing units preserved in 2016-2017.⁶¹</p>	<p>Massachusetts: Just over 6,000 affordable housing units preserved with state resources in 2016.⁶²</p>	<p>Chicago: More than 5,000 affordable housing units preserved since 2008.⁶³</p>
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Best Practices for LIHTC Preservation Policies

1. Create a preservation database of LIHTC properties.
2. Prioritize properties for preservation.
3. Organize a preservation stakeholder group.
4. Create a local preservation department.
5. Close the qualified contract loophole.
6. Adopt longer and more robust notices of preservation opportunities.
7. Require longer affordability periods.
8. Increase state and local funding for financing preservation efforts.

For example, if a LIHTC property is owned by a for-profit entity, eligible to exit via the qualified contract process, and is in a gentrifying area, the property is at a higher risk of exiting the LIHTC program and converting to market-rate. Conversely, if a LIHTC property is located in a distressed neighborhood or the owner is a nonprofit organization, the property is less likely to exit the LIHTC program, or if it exits, the rents are less likely to increase.⁶⁴

There are many examples of local, regional, and statewide affordable housing databases. Which type of database is most useful in a particular jurisdiction will depend on state and local resources, the political climate, and stakeholders' willingness to commit to preservation efforts across the state.

Key Data for a LIHTC Property Preservation Database

- Location of the property.
- The types and terms of the affordability restrictions on the property (e.g. is the property eligible to exit via the qualified contract process; are there any city affordability restrictions?).
- Does a right of first refusal (ROFR) exist? If so, what are the terms of the ROFR (e.g., length of notice period, ROFR price formula)?
- Is there a contractual ROFR with a designated qualified nonprofit?
- Owners (public, for-profit, or nonprofit).
- Compliance reports, including property inspection data.
- Median rents and incomes in the property's census tract (and whether they are changing).
- Changes in demographics and housing market activity that indicate whether the area is undergoing displacement pressures from gentrification.

Examples of statewide preservation databases

- **The Colorado Housing Preservation Network (HPN)** was formed in 2016 and is spearheaded by the Colorado Housing and Finance Authority (CHFA). As of March 2018, HPN's database contained information for 1,300 affordable properties and 90,000 units, including approximately 55,000 units that have affordability restrictions in place.⁶⁵ The remaining 35,000 affordable units are "naturally affordable" at market rates. The database includes: (1) the type of affordability restrictions in place, if any; (2) the expiration date of the affordability restrictions; (3) the name of the owner; (4) area median income levels; and (5) number of bedrooms.
- **California Housing Partnership Corporation (CHPC)** is a legislatively-created organization that serves to preserve existing affordable housing units and provide state and national level advocacy to increase the stock of affordable housing in California. CHPC maintains an extensive database of federally- and state-subsidized affordable housing in the state—including LIHTC properties—which is used to track at-risk properties and develop preservation strategies for specific apartments.⁶⁶ For LIHTC properties, CHPC receives semi-annual updates from the California Tax Credit Allocation Committee including, (1) property names and addresses, (2) total number of units and total number of low-income units, (3) size of units, (4) populations served (e.g., seniors or families), (5) date placed in service, (6) income groups served, (7) owner and management information, and (8) year the regulatory agreement ends.⁶⁷
- **The Community Economic Development Assistance Corporation (CEDAC)** in Massachusetts is a legislatively-created affordable housing finance corporation that has been an important part of Massachusetts's impressive efforts to preserve around 4,000 units per year.⁶⁸ In addition to providing financial support to community development corporations and other nonprofit developers, CEDAC offers technical and planning assistance for partners focused on affordable housing preservation. To aid partners' preservation efforts, CEDAC maintains a database of over 130,000 subsidized affordable units that are at risk of conversion, including: (1) owner information, (2) property location, (3) number of units at risk of converting to market-rate, (4) dates that a property becomes at risk of conversion, and (5) area market rents.⁶⁹ The current database, published in March 2018, is focused on properties that will be at risk of conversion by December 2022 and has identified more than 14,000 units that are at risk of converting to market rate before January 2020.⁷⁰

Examples of local preservation databases

- The **Preservation Compact in Chicago** brings diverse stakeholders together to create “intentional, coordinated strategies to preserve affordable rental housing.”⁷¹ The Preservation Compact maintains a database for use by its Interagency Work Group (IWG), which focuses exclusively on preserving government-subsidized affordable housing in Chicago in strong or increasingly strong markets. The database is also used by the Compact’s Interagency Council (IC), which determines the group’s broad preservation policies. The database includes information similar to other databases discussed above, in addition to the physical condition of properties, since the Compact relies on the physical condition of a property as an indicator of whether an owner is considering exiting a subsidy program.
- **Washington, D.C.’s Preservation Catalog** is a database of subsidized affordable housing properties maintained by two nonprofits: the Urban Institutes’ NeighborhoodInfo DC and the Coalition for Non-profit Housing and Economic Development.⁷² The database tracks not only properties with expiring subsidies but also those in disrepair and in need of rehabilitation. The database draws from government data as well as on-the-ground knowledge shared by participating members who are familiar with specific properties. The database tracks property names, addresses, owner information, types of subsidies and expiration dates, failing physical inspection scores, number of rent-restricted units, and the risk of losing the property. The Preservation Catalog is searchable via a map through which users can narrow their search by location or whether a property is considered at risk of converting to market rate in the next 12 months.

Database access

Preservation groups differ in their philosophies on who can access a preservation database. The main consideration is whether to allow access to for-profit developers and investors. There are pros and cons of providing less restrictive access. It is beneficial for all preservation stakeholders to have access to information that guides decisions about how to allocate resources, and transparency helps reduce duplication of work among for-profit and nonprofit developers. On the other hand, preservation groups express concerns that for-profit developers and investors with access to preservation databases would take advantage of that information to remove the property from a community’s affordable housing inventory.

- In **California, CHPC** strictly limits access to its preservation clearinghouse. The information is available free of charge to government entities and nonprofit affordable housing organizations. CHPC will not provide data to real estate agents or to any other party that is not clearly committed to preserving affordable housing and respecting CHPC’s prohibition against the resale or reuse of its database information.⁷³ If CHPC does provide data to a for-profit entity, CHPC charges \$50 to \$500 for various forms of data summaries.⁷⁴
- **Chicago’s Preservation Compact** database is shared with the Compact’s IWG, which consists of the U.S. Department of Housing and Urban Affairs (HUD), the Illinois Housing Development Authority, Cook County, and the City of Chicago. The IWG convenes approximately every two months to identify at-risk properties and to coordinate and develop preservation strategies for selected properties. Although the IWG does not include nonprofits, IWG does frequently invite other preservation stakeholders, including nonprofit and for-profit developers, to join its subgroups focused on preserving specific properties.⁷⁵
- In **Massachusetts, CEDAC** does not typically make its complete database available to outside organizations, with two exceptions: (1) researchers, with certain caveats about data usage, and (2) community development corporations, but limited to their geographic service area.
- **HPN in Colorado** shares its database with a wider variety of entities, including regional housing finance agencies, local HUD offices, nonprofit housing developers, and other nonprofit housing organizations, including local housing finance organizations.⁷⁶ Colorado Housing and Finance Authority staff use the database to identify for their community partners which properties are nearing the end of their affordability restrictions and assist them in finding preservation buyers and with preserving the properties.

- **D.C.'s Preservation Catalog** is freely available online, and includes a comment section that allows users to add information about specific properties.⁷⁷

2. Prioritize properties for preservation.

A second key component of a preservation strategy is prioritizing which properties to target for preservation. A preservation strategy should first help identify which properties are most at risk of exiting the LIHTC program. TDHCA's Land Use Restriction Agreements (LURAs)—which contain key terms impacting preservation risk—can vary substantially across LIHTC properties, even within the same allocation years. As a result, it is important to review the LURA for each property to understand how vulnerable the property is to exiting the LIHTC program. Terms to look for in the LURA include when the property is eligible to go through the qualified contract process, whether the property has a right of first refusal (ROFR), and whether the pricing of the ROFR is based on fair market value (see discussion of ROFRs in Sections 3 and 4).

A preservation strategy should also help identify properties with characteristics that make them good candidates for preservation. Not all properties will be strong candidates for devoting precious preservation resources. For example, some properties will be too expensive to preserve because of the high qualified contract prices (see discussion in Section 4) or high market valuation of the property. Other properties may be poorer preservation candidates because they are in an area with concentrated poverty where LIHTC rents are similar to market rents.

The information from a preservation database—along with a host of additional data—is an integral part of prioritizing properties. Whether a property is a good candidate for preservation can vary substantially between communities and will depend on both property and neighborhood characteristics, as well as local policy priorities.

A recent report by the National Low-Income Housing Coalition and the Public and Affordable Housing Research Corporation highlights how policymakers and advocates, in developing preservation strategies, also have to weigh competing policy interests in terms of where to direct preservation resources.⁷⁸ The report focuses on two neighborhood characteristics: neighborhood desirability and opportunity.

Apartment at Higher Risk of Exiting the LIHTC Program in Texas

- The property is owned by a for-profit entity.
- The property was allocated tax credits prior to 2002.
- The property's LURA provides that the property is eligible to exit the LIHTC program through expiration of its affordability period or the qualified contract process.
- The property does not have a ROFR or the pricing of the ROFR is based on fair market value.
- The property is located in an area where market rents of properties exceed the LIHTC rents.

- **Neighborhood desirability index:** Represents the likely quality of the neighborhood. Assesses percent of households with incomes greater than \$200,000, percent of population in poverty, median housing value, personal crime index, and housing vacancy rate.
- **Neighborhood opportunity index:** Represents the “degree to which each neighborhood provides access to amenities thought to provide pathways for economic mobility.” Assesses labor market access, education opportunities, transit access, and a healthy environment.

According to this report, nationally, only 9% of LIHTC units with affordability restrictions expiring between 2020 and 2029 are located in neighborhoods with high or very high desirability and access to opportunity. This latter set of units are most likely to convert to market-rate, provide the best access to jobs and educational opportunities, and would be the most challenging to replace if lost from the LIHTC inventory. Tenants in these neighborhoods would also be highly unlikely to find replacement housing they can afford in these neighborhoods.⁷⁹

Assessing Whether a LIHTC Property Should be Prioritized for Preservation

- How likely is it that the property will exit the LIHTC program?
- To what extent is the neighborhood gentrifying and facing increasing displacement pressures?
- What is the physical condition of the property?
- What would it cost to acquire and rehabilitate the property?
- What are the housing market conditions in the property's neighborhood? By how much do market rents exceed the LIHTC-restricted rents?
- Is the current owner or new owner an experienced mission-driven organization committed to long-term affordability and quality of the property?
- Is the property located in an area with concentrated poverty and would preserving this property perpetuate segregation?
- Is the property located in a high opportunity area providing access to transit, high-quality schools and jobs, a healthy environment, grocery stores, and other amenities?

Meanwhile, 42% percent of LIHTC units with expiring affordability restrictions are located in neighborhoods with both low desirability and low opportunity.⁸⁰ Properties in these neighborhoods often offer fewer resources and benefits to tenants and typically need assistance with rehabilitation rather than maintaining affordability.⁸¹ Preserving these LIHTC properties may play an important role in community-development-driven approaches and reducing disinvestment in distressed communities, but would detract resources from furthering fair housing and access to opportunity.

In analyzing where to invest preservation resources, consideration should also be given to whether a neighborhood is undergoing gentrification or is susceptible to gentrification and, thus, likely to experience rapid increases in both desirability and opportunity—as well as displacement of low-income renters.

The following provides examples of ways in which preservation groups around the country are prioritizing LIHTC properties for preservation.

- **Massachusetts' CEDAC** has a three-tier "Prioritization Matrix for Preservation Projects" for all of its affordable housing, including LIHTC properties.⁸² CEDAC considers risk of loss due to market conversion, physical condition, financial viability, and "market condition opportunity." Market condition opportunity assesses the economic benefit of purchasing the property and converting it to market rates. CEDAC prioritizes larger properties for preservation.
- **HPN in Colorado** also has a detailed three-tier priority matrix for preservation, which considers risk factors and access to opportunity considerations. The matrix's risk factors include: physical condition, financial viability, the history of public investment in the property, percent of high priority populations served (e.g. extremely low income, family, senior, etc.), and size of the property. HPN also considers various "opportunity" factors to determine whether a particular preservation purchase would present a "unique opportunity" to purchase a project at below-market price:
 - Access to opportunity in the area: de-concentration of poverty and access to high-performing schools, higher education, retail areas, high quality jobs, and other public amenities.
 - Estimated cost per bedroom to acquire and rehabilitate the property.
 - Sustainability of a preservation investment: Is the owner a mission-driven organization that will commit to longer-term affordability?

3. Organize a preservation stakeholder group.

An underlying theme in cities and states with successful LIHTC preservation efforts is the formation of a preservation stakeholder group with the express purpose of facilitating the preservation of affordable housing. Preservation groups can be local, regional, or statewide in focus. The structure and makeup of preservation groups take many forms depending on the political will of state and local government entities; the substantive goals of the group; and the existing relationships between nonprofit developers, for-profit developers, and tenant advocacy groups. Some preservation groups include for-profit housing developers and finance organizations, while others do not.

Stakeholder groups play a variety of roles in preservation efforts, including creating and hosting preservation databases; coordinating the efforts of government, nonprofit, and for-profit developers making preservation purchases; advocating for effective preservation policies and priorities; and educating tenants and assisting with capacity-building efforts aimed at helping tenants and nonprofit housing organizations take advantage of ROFRs.

The following are examples of successful preservation groups in Colorado, Illinois, Massachusetts, and Washington, D.C.:

- In **Colorado**, the **Housing Preservation Network (HPN)** is made up of a wide variety of stakeholders, including the Colorado Department of Local Affairs-Division of Housing, HUD, local governments and housing authorities, nonprofit housing developers, and nonprofit housing advocacy organizations.⁸³ HPN is housed within and spearheaded by the state housing agency, the Colorado Housing and Finance Authority (CHFA). CHFA maintains the state's housing preservation database and is able to use its resources and statewide reach to help raise the profile of preservation as a distinct goal. CHFA also works in close partnership with local governments. For example, CHFA works closely with the City of Denver in implementing the city's local housing preservation ordinance, sending out mailings to give owners notice of their responsibilities under the ordinance.⁸⁴

HPN holds quarterly meetings where all stakeholders come together to discuss and learn about preservation issues. The quarterly meetings are primarily educational in nature rather than planning for specific future action items. Because HPN's stakeholder group is large and varied, subcommittees are used primarily for specific projects.

In its first two years, HPN developed a database of affordable housing properties that are most at risk of converting to market rate as well as a preservation priority matrix. These efforts, in combination with HPNs' investment and leveraging of hundreds of millions of dollars for preservation efforts, has helped preserve thousands of units across Colorado.⁸⁵

- **The Preservation Compact** is a group of preservation stakeholders focused on preserving affordable multifamily properties in Cook County. Preservation Compact's partners include financial organizations, state and local housing authorities, planning commissions, nonprofit advocacy organizations and developers, for-profit developers, HUD, and universities.⁸⁶ The Preservation Compact is active in a wide variety of preservation efforts, including policy advocacy and the development and implementation of preservation strategies.

Preservation Compact has a Leadership Committee and working groups for each of its activities,⁸⁷ along with the Interagency Council and Interagency Working Group, which bring together representatives from local, state, and federal governmental agencies, as well as grass roots and other nonprofit organizations by invitation, to focus on direct interventions in at-risk properties.⁸⁸ Since 2008, the Compact has helped preserve over 50 government-subsidized properties—5,000 affordable rental units—through its efforts to connect tenants and property owners to preservation resources, including identifying preservation buyers.⁸⁹

- In **Massachusetts**, the **Community Economic Development Assistance Corporation (CEDAC)** has been a leader in creative affordable housing preservation efforts, and many other preservation groups across the country have formed in response to CEDAC's success. CEDAC includes a wide variety of stakeholders and convenes two working groups that are particularly important to affordable housing preservation in Massachusetts.⁹⁰ The Interagency Working Group (Mass IWG) includes senior staff from the state Department of Housing and Community Development, City of Boston, the Massachusetts Housing Investment Corporation, and HUD. CEDAC also hosts the Preservation Advisory Committee (PAC), which is comprised of a wide variety of public, private, for-profit, and non-profit stakeholders, including developers and advocacy groups.⁹¹ PAC convenes quarterly to discuss big-picture preservation policy considerations and to assign tasks to the Mass IWG when necessary. For example, in 2009, Mass IWG created CEDAC's preservation prioritization matrix discussed above at the behest of the PAC.⁹² CEDAC was integral in passing Massachusetts' important statewide preservation law, 40T, which has helped preserve thousands of affordable units since its adoption in 2009.⁹³
- The **DC Preservation Network** in **Washington, D.C.** brings together government agencies and community-based organizations once a month to review properties identified in the DC Preservation Catalog as being in danger of losing affordability or in major disrepair and to develop strategies for preserving the properties. The meetings are open to anyone doing affordable housing work in the region.⁹⁴ The openness and inclusiveness of the Network has generated important preservation collaborations and has been a key part of the Network's success. The Network also advocates for policy changes within the municipal government.

4. Create a local preservation department.

Several cities around the country have created programs and staff positions dedicated to multifamily housing preservation. Three of these models are discussed here:

- **New York City's Department of Housing Preservation and Development (NYHPD)** is the largest municipal affordable housing preservation and development agency in the country and is responsible for implementing the city's affordable housing strategy, called Housing New York.⁹⁵ NYHPD implements several important preservation strategies, including forming stakeholder groups to assess how local ordinances, such as the municipal Housing Maintenance Code and Building Code, could be altered to facilitate preservation efforts.⁹⁶ Additionally, NYHPD identifies expiring affordable housing projects and works with owners to extend affordability restrictions on government-subsidized properties, including through the LIHTC Preservation Program, a unique program that provides technical assistance for rehabilitation to owners nearing the end of their compliance periods. NYHPD has identified this particular strategy to be a key component of meeting the city's housing goals.

NYHPD also runs the Neighborhood Preservation Consultant Program, contracting with local nonprofits to "provide early intervention and anti-abandonment services to privately-owned buildings throughout the City."⁹⁷ This program serves to ensure that naturally affordable units remain in a livable condition and are therefore not lost from the affordable housing stock due to disrepair.
- **Los Angeles' Housing and Community Investment Department (HCIDLA)** "creates and implements non-financial strategies to extend and preserve affordable housing at risk of losing its affordability restrictions."⁹⁸ The Department received a MacArthur Foundation Grant that has allowed the City to implement a variety of programs and preservation efforts, including:
 - Managing the affordable housing inventory in Los Angeles by keeping track of properties converting to market rate and interviewing owners about potential opt-out plans.
 - Connecting owners, tenants, and developers to resources for preservation efforts.
 - Enforcing California's notice of intent to sell law.

- Supporting collaboration among agencies developing preservation policies. (This is primarily done through the Los Angeles Affordable Housing Commission (AHC), a group of seven commissioners appointed by the Mayor that meets monthly and makes policy recommendations regarding improving preservation efforts in the city.⁹⁹)

By allocating all of these responsibilities to a city agency, rather than a nonprofit or groups of nonprofits, Los Angeles is able to implement a comprehensive preservation plan for its stock of affordable housing. Between 2013 and 2017, Los Angeles was able to preserve over 7,000 affordable units, including more than 2,500 subsidized units that HCIDLA identified as at risk of converting to market-rate rent.¹⁰⁰

- **Washington, D.C.’s** preservation efforts are housed in the **Department of Housing and Community Development (DHCD)** which, since 2017, includes an Affordable Housing Preservation Unit led by an Affordable Housing Preservation Officer.¹⁰¹ The preservation unit and officer position were recommended by Mayor Bowser’s Housing Preservation Strike Force as one of six key strategies for improving affordable housing preservation efforts in the D.C. area. The preservation unit is responsible for preserving both non-subsidized and subsidized affordable housing units in the District, including conducting outreach to property owners, negotiating preservation deals, and providing financial and technical assistance.¹⁰²

5. Close the qualified contract loophole.

As discussed in Section 1, the qualified contract process is a large loophole to the affordability requirements in the LIHTC program. Requiring or incentivizing LIHTC development owners to waive their right to participate in the qualified contract process is one of the most effective preservation policies available to cities and states.

Texas, as mentioned in Section 1, has barred post-2001 LIHTC properties from going through the qualified contract process until after 30 years of service.¹⁰³ Despite these positive steps towards preservation, the 30-year affordability period is still lower than the affordability periods adopted by many other states and cities—and the law is unclear as to whether 9% properties with longer affordability commitments (as a result of QAP points) can still exit at year 30 via the qualified contract process. Additionally, close to 800 pre-2002 LIHTC properties in Texas are currently allowed to exit early through the qualified contract process after only 15 years of affordability.

The following are examples of best practices adopted across the country to disallow or disincentivize early exits via the qualified contract process. Some of the tools are targeted for future generations of LIHTC properties, while other tools would impact current LIHTC properties.

5a. Require through the Qualified Allocation Plan that LIHTC applicants waive their right to use the qualified contract process.

Several states require LIHTC applicants to waive their right to use the qualified contract process as part of the states’ Qualified Allocation Plans (QAPs) as either a threshold requirement (that is, applying to all applicants) or in exchange for points in the competitive 9% tax credit application process.

- **Idaho’s** QAP awards 15 points for project applicants that commit to providing 40 years of affordability. Applicants receiving these points are required to waive their right to request a qualified contract until the end of their 40-year commitment. Four percent LIHTC project applicants in Idaho must also waive their right to request a qualified contract for a 40-year period.¹⁰⁴
- In **Colorado**, 4% and 9% LIHTC property owners must agree to waive their right to request a qualified contract until the property has been in service for 20 and 40 years, respectively. The state’s QAP provides additional points to 4% tax credit applicants that waive their right to exit the LIHTC program through the qualified contract process for an additional period of time. In Colorado, both the 4% and 9% LIHTC programs use scoring criteria to screen applicants.

- **Wyoming** provides substantial incentives in its QAP for project applicants who commit to affordability restrictions for up to 65 years. Applicants with extended affordability periods are required to waive their right to request a qualified contract until the end of the affordability period agreed to in the application.¹⁰⁵
- **California** has made qualified contracts unavailable for all post-1995 LIHTC projects by imposing a threshold requirement for all LIHTC applicants to waive their right to a qualified contract. The waiver is required for both 4% and 9% LIHTC project applications.¹⁰⁶

5b. Bar LIHTC owners who request qualified contracts from future LIHTC allocations.

In North Carolina's QAP, any developer who has previously requested a qualified contract for a LIHTC property is barred under the state's QAP from applying for tax credit allocations in the current year.¹⁰⁷

5c. Discourage early exits via the qualified contract process.

Several state housing finance agencies actively discourage their LIHTC owners from exiting early via the qualified contract process and require collaboration to explore preservation alternatives. The Michigan State Housing Development Authority requires owners to meet with the director to discuss options for keeping the property affordable.¹⁰⁸ Similarly, the Minnesota Housing Finance Agency recognizes that "[r]equesting a qualified contract is a difficult process that involves substantial time and energy" and that it "may not be the best alternative in every situation. Owners are also encouraged to consider other options."¹⁰⁹ To that end, each applicant is assigned an agency underwriter to discuss alternatives to the qualified contract process.

5d. Condition certain state housing agency actions on LIHTC owners waiving their qualified contract rights.

The National Council of State Housing Agencies recommends requiring purchasers of existing LIHTC properties to waive their rights to request a qualified contract as part of the transfer agreement. This requirement could be extended to other circumstances in which LIHTC property owners must get approval from a state housing finance agency. For example, LIHTC owners must get their housing finance agency's approval for limited partners to exit the partnership agreements (which typically occurs between years 10 and 15). States could require owners to waive their right to participate in the qualified contract process in exchange for these approvals.

5.e. Provide financial incentives for qualified contract waivers.

In cases where properties are overburdened by debt at the end of their compliance period, owners may find that the only feasible option is to sell the property or transition the property to market rate via the qualified contract process. State housing finance agencies and municipalities can incentivize these owners to enter into qualified contract waivers in exchange for state or local refinancing assistance.

6. Adopt longer, more robust notices of preservation opportunities.

Notice periods for properties seeking to exit the LIHTC program should reach all interested stakeholders and provide potential preservation buyers with adequate information about the property and time period for lining up a preservation deal. The following are examples of cities and states with strong notice requirements:

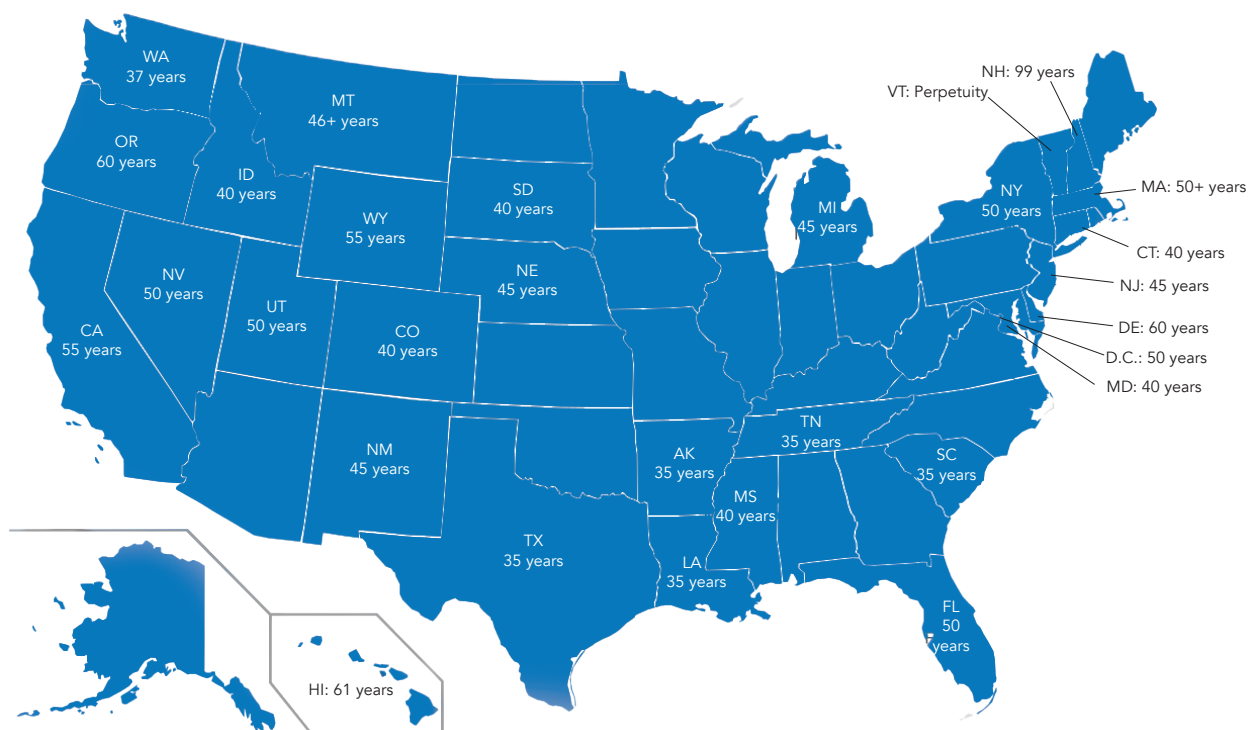
- **Chicago** requires affordable housing development owners, including LIHTC development owners, to provide the city with a 12-month notice of intent to exit the program. The notice must include 15 pieces of information, including: (1) an itemized list of the property's capital expenditures for the preceding two years and (2) the amount of project reserves.¹¹⁰ Affordable housing development owners are also subject to the notice requirements in Illinois' state preservation law (discussed below).
- **Massachusetts'** preservation law, 40T, has particularly robust notice provisions requiring three notices for publicly-assisted housing, including LIHTC properties. The notice must be provided to all

tenants in person or via first-class mail, as well as to any applicable tenant organization, the city, and the state housing department.¹¹¹ 40T requires the following notices:

- A 2-year notice period prior to the end of the affordability restrictions (regardless of whether the owner is actually going to terminate affordability restrictions).
- A 1-year notice period prior to the end of the affordability restrictions if the owner is planning on terminating affordability restrictions or allowing a termination of the restrictions to occur.
- A Notice of Intent to Sell prior to the sale of any publicly-assisted housing, after which the Massachusetts Department of Housing and Community Development has 90 days to decide whether or not to purchase the property.¹¹²
- **Illinois'** statewide preservation law is called the Federally Assisted Housing Preservation Act (FAHPA) and requires development owners to give 12-month notice prior to an election to sell or otherwise dispose of any LIHTC or other federally-assisted property.¹¹³ The notice must be sent to the state housing agency, the mayor, the local public housing authority, and tenants, and must include an extensive list of information, including vacancy rates and financial and compliance reports.¹¹⁴
- In **California**, all owners of federally-assisted affordable housing properties (including LIHTC) must give at least 12-month notice of the expiration or intent to opt out of the affordability restrictions.¹¹⁵ The notice must be given to tenants as well as the mayor, local public housing authority, and state housing department.¹¹⁶

7. Require longer affordability periods.

Long-term affordability restrictions are a critical tool for creating a stable affordable housing inventory. As discussed above, the federal LIHTC program requires only 30 years of affordability, and absent state or municipal intervention, owners can request a qualified contract to exit the program after only 15 years of service. Many states and municipalities recognize that 30 years of affordability is insufficient, particularly given the millions of dollars in subsidies that each LIHTC property typically receives. **Twenty-six states either require or incentivize LIHTC applicants to commit to affordability terms longer than 30 years.**¹¹⁷



For example:

- Wyoming (see Table 3) and Delaware provide point incentives for applicants who commit to affordability terms of 65 and 60 years, respectively.¹¹⁸
- California requires all LIHTC properties to commit to 55 years of affordability.
- Massachusetts, Michigan, and Vermont require 99 years of affordability.

Cities around the country also play a key role in securing long-term affordability in LIHTC properties. Cities often provide financing to LIHTC applicants, providing leverage to require longer affordability terms. If a property exits from federal and state affordability terms via a qualified contract, the municipality's affordability term continues, ensuring longer-term affordability of the property. For example:

- In **Texas**, **Austin's** Rental Housing Development Assistance program requires a minimum of 40 years affordability for properties that receive general allocation bond money, including LIHTC projects.¹¹⁹
- **Boston** requires LIHTC properties receiving city subsidies to have a 99-year affordability term. The City of Boston has noted that, although there was some push back by for-profit developers when the city first implemented this "perpetual affordability" requirement, intense competition for LIHTC credits was ultimately enough leverage to get developers to agree to the provision. The City is substantially involved throughout the life of these properties:
 - As a lender for most of these properties, the City of Boston commits substantial resources to ensuring there is sufficient underwriting.
 - The City has significant oversight of properties to address issues with owners who are not appropriately reinvesting in maintenance.
 - The City encourages property owners to come back to the City for additional resources needed for rehabilitation and maintenance as the property ages.¹²⁰
- **Denver** amended its preservation ordinance in October 2018 and changed the affordability term from 20 years to 60 years for all affordable housing developments that receive city subsidies. Similar to Austin, a majority of the LIHTC properties developed in the city obtain a subsidy from the City of Denver.¹²¹

Table 3. Wyoming LIHTC Application Points for Longer-Term Affordability

Affordability Term	Points Awarded
35	2
40	3
45	5
50	10
55	17
65	35

Texas municipalities and counties have additional leverage in requiring longer-term affordability because LIHTC applicants generally must receive the city's or county's approval as a condition of qualifying for the credits. Specifically, 4% credit applicants utilizing private activity bond funding (which is typical for 4% projects) must receive a resolution of support or "no objection" from the city council (or county commissioners court if the property is not in a city) where the project is located in order to be eligible for credits.¹²² Through the state's QAP, 9% credit applicants receive up to 17 or 14 points for receiving a resolution of support or "no objection," respectively, from the local governing body.¹²³ Given the competitive nature of the 9% program, this means that an applicant essentially has to get a city or county letter of approval to be a contender for the credits.

8. Increase state and local funding for financing preservation efforts.

The successful implementation of a preservation strategy depends on the commitment of state or local financial resources. While funding for the preservation of LIHTC properties often comes from a new allocation of tax credits, through a process called "resyndication," the most successful and impactful preservation programs also utilize funding from state and local governments. These funds are used to directly support

the costs of acquiring and making improvements to LIHTC properties—as well as for related programmatic needs, such as capacity-building efforts for tenant groups and nonprofits working to preserve subsidized properties.

8a. Funding for preservation.

The following is a diverse set of examples of how states and cities across the country are dedicating their financial resources towards preserving affordable rental properties.

- For the past three years, **Washington, D.C.**, has allocated more than \$100 million a year in city funding for D.C.'s Housing Production Trust Fund (HPTF), with the bulk of the funding used for multifamily housing preservation and production.¹²⁴ The fund helped preserve and produce more than 1,900 affordable units in 2017, and a total of 9,500 affordable units between 2001 and 2016.¹²⁵
- D.C. also recently created a **Housing Preservation Fund**, which is raising both public and private funding to provide quick, short-term bridge acquisition and pre-development financing for preservation projects. The District of Columbia seeded the revolving loan fund with a \$10 million contribution, with the hope of growing the fund to \$30 million.¹²⁶ This initiative was another key strategy proposed by D.C.'s Housing Preservation Strike Force.
- In 2008, the **City of Portland** launched a campaign to preserve 11 subsidized apartment complexes that were at risk of losing their affordability restrictions by 2013. Through the City's 11 x 13 Preservation Campaign, the City and other partners were ultimately able to preserve all 700 affordable rental homes in the 11 properties. The City dedicated \$22 million in subsidies and loans towards the initiative (primarily through Tax Increment Financing), which leveraged \$100 million in private investments and more than \$120 million in federal assistance.¹²⁷ The apartments must remain affordable for at least 60 years.

The City of Portland relies most heavily on tax increment financing and general obligation bonds to fund affordable housing preservation and other affordable housing projects. In the North and Northeast areas of Portland, the city has committed to providing more than \$100 million in tax increment financing funds towards reducing the displacement of low-income residents. In 2016, Portland voters approved \$250 million in general obligation bond funding for affordable housing production and preservation citywide, and in 2018, voters in the three-county Portland region approved a \$652.7 million affordable housing bond.

- **Denver's Regional Transit-Oriented Development Fund** is a \$24 million revolving, below-market loan fund that offers low-cost loans to affordable housing developments or others seeking to purchase and preserve affordable housing near public transit infrastructure, to offset the displacement of low-income households that can occur with major transit projects. The fund is capitalized with public, private, and philanthropic funds. Loans from the fund are typically five to seven years, at which time the property is refinanced with other loans or subsidies such as LIHTCs. Since its creation in 2010, the fund has invested \$32.8 million towards the preservation of 1,354 affordable rental homes along with other related projects, leveraging more than \$200 million from project partners.

8b. Funding for tenant and nonprofit capacity building.

The LIHTC program contains opportunities for tenants and qualified nonprofit housing organizations to purchase properties via a right of first refusal prior to a LIHTC property exiting the program. Several states and local governments support tenants and nonprofit organizations in exercising these rights by providing technical assistant and capacity building support. One of the strongest models is Washington, D.C.

- **Washington, D.C.** funds organizations to provide a broad range of services to assist tenants with purchasing their affordable housing, including tenant organizing and technical assistance with sales negotiations, and securing financing. D.C.'s Office of Tenant Advocate, which receives \$4 million in funding from the District, helps support tenants in exercising their rights of first refusal. D.C. also provides robust funding for capacity-building of nonprofit housing preservation organizations. Thanks

to this support, today, D.C. is home a large number of high capacity nonprofits organizations that are actively engaged in the affordable housing preservation sector. The D.C. Preservation Network lists 135 affiliated organizations, which are mostly groups engaged in preservation work or affiliated support.

SECTION 7. RECOMMENDATIONS FOR PRESERVATION STRATEGIES IN TEXAS

To address the threats to Texas' LIHTC property inventory identified in Section 4, Texas needs new preservation policies and approaches. Texas has already lost 5,000 LIHTC units and, without change, stands to lose thousands more critically-needed affordable units for low-income seniors and families. Incorporating the best practices identified in Section 6, we recommend the following state- and local-level actions for improving the preservation of LIHTC properties in Texas.

Recommended Actions to Preserve LIHTC Properties in Texas

1. Understand what's at risk: Create a preservation database of vulnerable LIHTC properties.
2. Develop a preservation infrastructure: Organize a LIHTC preservation stakeholder group and create staff positions in state and local housing agencies to support preservation efforts.
3. Plan for preservation: Create a comprehensive preservation strategy for LIHTC properties.
4. Prevent early exits: Require or incentivize LIHTC owners to waive their right to a qualified contract.
5. Support preservation buyers: Improve the effectiveness of rights of first refusals.
6. Plan Ahead: Incentivize and require longer affordability terms and preservation protections in future LIHTC properties.

1. Understand what's at risk: Create a preservation database of vulnerable LIHTC properties.

Texas needs a comprehensive database that will allow preservation advocates to actively identify and intervene in LIHTC properties at risk of converting to market-rate rents or sliding into substandard condition. To our knowledge, Texas currently has no state or local databases that do this. The database could be statewide, or cities or coalitions of preservation stakeholders could operate their own local or regional databases. As part of designing a database, policies and protocols will need to be developed to determine who can access the database and who will be responsible for updating the database.

TDHCA should make readily available its information regarding LIHTC properties to any entities operating a preservation database. The database operator will need the LURAs for all LIHTC properties and the dates that LIHTC properties were placed in service, as well as regular updates from TDHCA regarding compliance inspections, property sales, and other information about LIHTC properties.

Regardless of whether the database is local or statewide, the database should include information on neighborhood characteristics that might make a LIHTC property more vulnerable to converting

Property Data to Include in a LIHTC Preservation Database in Texas

- The types and terms of affordability restrictions on the property, including eligibility to exit via the qualified contract process
- Ownership type (for-profit, nonprofit, public)
- The year the property was placed in service
- Whether there is a ROFR in the property's LURA and, if so, the length of the ROFR notice period, the method for calculating the ROFR price, and whether a qualified nonprofit is designated
- Condition of the property, as identified in TDHCA's compliance inspections

to market rate after its compliance period has expired. Data to consider including: median rents and incomes in the area, changes in demographics and housing market activity (to identify displacement pressures), and neighborhood opportunity and desirability. See the best practices discussion in Section 6 for a more thorough discussion of neighborhood condition data to track.

In addition to existing information about LIHTC properties, TDHCA should interview LIHTC development owners three to five years prior to the end of their compliance period to understand:

- financing that the owner would need to remain in the LIHTC program
- rehabilitation that will be necessary at the time opting out becomes available
- asset management considerations or concerns
- preservation needs in the area
- whether the owner is considering opting out of the LIHTC program

2. Develop a preservation infrastructure: Organize a LIHTC preservation stakeholder group and create staff positions in state and local housing agencies to support preservation efforts.

Texas should form a statewide stakeholder group—or city or regional stakeholder groups—focused on identifying at-risk LIHTC properties as well as creating and implementing strategies for the preservation of these properties. At a minimum, the stakeholder group should include representatives from local, state, and federal government agencies and nonprofit housing developers and preservation advocacy organizations. We also recommend the stakeholder group include tenant groups, for-profit developers, investors, university researchers, and any other stakeholders committed to preservation.

Building from national best practices, we recommend that the preservation group designate a smaller working group that focuses on direct preservation interventions in at-risk LIHTC properties, similar to the Preservation Compact’s Interagency Working Group. This group—ideally with TDHCA or city housing agency staff providing staffing support—would actively monitor properties that are at risk of exiting the program, including by reaching out to property owners to understand their exit plans. The group would then pull in other stakeholders as needed to promote the preservation of particular LIHTC properties, such as identifying financing options for a preservation purchase and connecting the owner with a preservation buyer.

For big-picture policy strategizing, we recommend a working group akin to the Leadership Committee at Preservation Compact in Chicago or CEDAC’s Preservation Advisory Committee in Massachusetts. The group should identify a working list of priority policies needed at both the local and state levels for promoting LIHTC property preservation.

The preservation group will need to determine how frequently its working groups and the general stakeholder group should convene. Working groups for specific projects or preservation efforts will likely need to convene more frequently. All stakeholders (for-profit, nonprofit, and public entities) should convene annually for an annual forum regarding preservation efforts in the state and to discuss national trends in preservation.

3. Plan for preservation: Create a comprehensive preservation strategy for LIHTC properties.

One of the first tasks for the preservation stakeholder group should be to create a comprehensive preservation strategy for LIHTC properties. As part of developing the strategy, the stakeholder group will need to identify which types of properties to prioritize for preservation. As discussed in Part 6, whether a property is a good candidate for preservation can vary substantially between communities and will depend on both property and neighborhood characteristics, as well as local policy priorities. The information from a preservation database—along with a host of additional data—will be an integral part of prioritizing properties. The stakeholder group should also identify existing resources available for preserving LIHTC properties, as well as resources and policy reforms needed to promote preservation.

TDHCA, and cities where applicable, should assign or hire staff to focus solely on supporting the stakeholder preservation group and implementing the comprehensive preservation strategies. Responsibilities of the preservation staff should include actively tracking LIHTC properties at risk of converting to market-rate rents, outreach to tenants about exercising their right of first refusal, interviewing owners regarding plans at the end of their compliance period, identifying financing options for preservation purchases, and conducting proactive outreach to potential preservation buyers.

4. Prevent early exits: Require or incentivize owners to waive their right to a qualified contract.

There are a number of discrete laws, policies, and procedures that the State of Texas and Texas cities can adopt to reduce the qualified contract loophole in the LIHTC program (see Part 4)—and therefore prevent LIHTC owners from converting to market rents before their affordability terms have expired:

State-level actions

- TDHCA should require LIHTC property owners to waive their right to a qualified contract in exchange for obtaining TDHCA's approval of certain administrative actions such as increasing rents, transferring the property to a new owner, and changes in partnership status.
- TDHCA should adopt administrative policies discouraging early exits via the qualified process, including requiring qualified contract applicants to meet with TDHCA's director or underwriters to discuss options for keeping the property affordable.
- TDHCA should issue administrative rules clarifying that properties with affordability terms of longer than 30 years are ineligible to exit early from the LIHTC program through the qualified contract process.
- To protect future LIHTC properties, the Texas Legislature should amend the Texas Government Code to permanently disallow the qualified contract process for all properties that receive LIHTC allocations in the future.

Local-level actions

- Utilizing the leverage created by the 9% QAP scoring criteria and 4% application laws (see Section 6), cities and counties in Texas should require that future applicants for tax credits consent to a permanent waiver of the qualified contract process as a condition of obtaining the city's or county's resolution of support or no objection.
- To protect LIHTC properties already in the city's inventory, Texas cities should require that a LIHTC owner consent to a permanent waiver of the qualified contract process as a condition of obtaining new funding or other incentives from the city.

5. Support preservation buyers: Improve the effectiveness of rights of first refusals.

There are also a number of discrete laws, policies, and procedures that the State of Texas and Texas cities can adopt to strengthen the effectiveness and scope of rights of refusal for LIHTC properties being sold. Rights of first refusal are a key preservation tool built into the LIHTC program to help tenant groups and mission-driven nonprofit organizations purchase and preserve LIHTC properties and maintain the properties for the long-term benefit of the community and low-income renters.

State-level actions

- Amend the Texas Government Code and Administrative Code to require all future LIHTC applicants (both 4% and 9% projects) to commit to a right of first refusal as a threshold requirement. At a minimum, TDHCA should increase the points allocated in the Qualified Allocation Plan for 9% applicants that commit to a ROFR.

- Amend the Texas Government Code and Administrative Code to require a one-year ROFR notice period (instead of 180 days) for future LIHTC applicants.
- TDHCA should adopt policies and procedures to ensure that robust and extensive notices of all activated rights of first refusal are provided to preservation stakeholders and prospective preservation buyers. TDHCA should require owners to send written notice through certified mail to the city and county housing agencies and local housing authorities. TDHCA should also make concerted, proactive efforts to reach out to qualified entities both in Texas and nationally—and should no longer rely solely on the agency’s listserv.
- TDHCA should adopt a program and provide funding to help tenant groups and qualified non-profits exercise their rights of first refusal. Support needed includes support for tenant organizing, capacity building, and on-going technical assistance. TDHCA should also require that ROFR notices to tenants include information about the tenants’ rights to organize and purchase the property.
- Adopt a clear policy in the Texas Government Code and the Administrative Code that caps the ROFR price at the minimum purchase price (as defined by federal law, 26 IRC Section 42(i)(7)) and not fair market value. Mandate that the sales price cannot exceed the ROFR price, regardless of how the LURA defines the ROFR price.
- For properties where a qualified entity has a contractual ROFR in the LURA and does not purchase the property via the ROFR, amend the Texas Government Code and Section 10.407(f)(3) of the Texas Administrative Code to provide that other qualified buyers have the opportunity to purchase the property at the ROFR price before the ROFR is considered satisfied.

Local-level actions

- In exchange for a local government’s resolution of support or no objection, cities should require 4% and 9% LIHTC applicants to:
- Provide a right of first refusal or right of first offer in the city or its designee when a LIHTC property owner decides to sell the property (with the terms of any ROFR in the property’s LURA taking precedence).
- Provide a Notice of Intent to Sell to both the city and tenants at two years and again at one year prior to the LIHTC owner requesting a qualified contract or selling the property.

6. Plan ahead: Incentivize and require longer affordability terms in future LIHTC properties.

Planning ahead, to better protect the preservation of the next generation of LIHTC properties, there are several laws and policies that the State and cities can adopt:

State-level actions

- The Texas Legislature should amend the Texas Government Code and Administrative Code to require all future applicants to commit to a minimum 55 years of affordability, rather than the 30 years currently mandated.
- Alternatively, TDHCA should provide opportunities in the QAP for 9% LIHTC applicants to earn points for up to 55 years of affordability instead of the 35 years that the QAP currently incentivizes each year.

Local-level actions

- In exchange for obtaining the city’s resolution of support or no objection or as a condition of any city funding or incentives, Texas cities should require LIHTC applicants to commit to an affordability term of at least 40 to 55 years.

Table 4: Summary of Recommendations for Preservation Strategies and Policies

<i>Preservation Strategy/Policy</i>	<i>Lead Entity</i>
1. Create a preservation database of vulnerable LIHTC properties.	TDHCA, cities, or a preservation stakeholder group
2. Organize a LIHTC preservation stakeholder group and create staff positions in state and local housing agencies to support preservation efforts.	TDHCA, cities
3. Create a comprehensive preservation strategy for LIHTC properties.	Preservation stakeholder group
4. Require or incentivize LIHTC owners to waive their right to a qualified contract.	
4a. Require LIHTC property owners to waive their right to a qualified contract in exchange for TDHCA's approval of certain administrative actions such as increasing rents, transferring the property to a new owner, and changes in partnership status.	TDHCA
4b. Adopt administrative policies discouraging early exits via the qualified process, including requiring qualified contract applicants to meet with TDHCA's director or underwriters to discuss options for keeping the property affordable.	TDHCA
4c. Issue administrative rules clarifying that properties with affordability terms longer than 30 years are ineligible to exit early from the LIHTC program through the qualified contract process.	TDHCA
4d. Amend the Texas Government Code to permanently disallow the qualified contract process for all properties that receive LIHTC allocations in the future.	Texas Legislature
4e. Require that a project applicant consent to a permanent waiver of the qualified contract process as a condition of obtaining the city's resolution of support or no objection.	Texas cities and counties
4f. Require that a LIHTC owner consent to a permanent waiver of the qualified contract process as a condition of obtaining new funding or other incentives from the city or county.	Texas cities and counties
5. Improve the effectiveness of rights of first refusals.	
5a. Amend the Texas Government Code and Administrative Code to require all future LIHTC applicants (both 4% and 9% projects) to commit to a right of first refusal as a threshold requirement. At a minimum, increase the points allocated in the Qualified Allocation Plan for 9% applicants that commit to a ROFR.	Texas Legislature and TDHCA

<i>Preservation Strategy/Policy</i>	<i>Lead Entity</i>
5b. Amend the Texas Government Code and Administrative Code to require a one-year ROFR notice period (instead of 180 days) for future LIHTC applicants.	Texas Legislature and TDHCA
5c. Adopt policies and procedures to ensure that robust and extensive notices of all activated rights of first refusal are provided to preservation stakeholders and prospective preservation buyers. Require owners to send written notice through certified mail to the city and county housing agencies and local housing authorities. Make concerted, proactive efforts to reach out to qualified entities both in Texas and nationally.	TDHCA
5d. Adopt a program and provide funding to help tenant groups and qualified nonprofits exercise their rights of first refusal.	TDHCA
5e. Adopt a clear policy in the Texas Government Code and the Administrative Code that caps the ROFR price at the minimum purchase price (as defined by federal law, 26 IRC Section 42(i)(7)) versus fair market value. Mandate that the sales price cannot exceed the ROFR price.	Texas Legislature and TDHCA
5f. For properties where a qualified entity has a contractual ROFR in the LURA and does not purchase the property via the ROFR, amend the Texas Government Code and Section 10.407(f)(3) of the Texas Administrative Code to provide that other qualified buyers have the opportunity to purchase the property at the ROFR price before the ROFR is considered satisfied.	Texas Legislature and TDHCA
6. Incentivize and require longer affordability terms in future LIHTC properties.	
6a. Amend the Texas Government Code and Administrative Code to require all future applicants to commit to a minimum 55 years of affordability.	Texas Legislature
6b. Provide opportunities in the QAP for 9% applicants to earn points for up to 55 years of affordability instead of the 35 years that the QAP currently offers each year.	Texas Legislature or TDHCA
6c. In exchange for obtaining the city's resolution of support or no objection or as a condition of any city funding or incentives, require LIHTC applicants to commit to providing an affordability term of at least 40 to 55 years.	Cities

Endnotes

¹ U.S. Dep’t of Housing and Urban Development (HUD), “Low-Income Housing Tax Credits” (June 6, 2018), available at <https://www.huduser.gov/portal/datasets/lihtc.html>.

² Texas Dep’t of Housing and Community Affairs, “HTC Property Inventory (as of July 26, 2018 Board Meeting),” available at <https://www.tdhca.state.tx.us/multifamily/housing-tax-credits-9pct/>.

³ HUD, “Low-Income Housing Tax Credits,” *supra*.

⁴ Information obtained from a PIR to the Texas Dep’t of Housing and Community Affairs on July 20, 2017, through which we obtained a list of properties that have exited the LIHTC program through the qualified contract process. We then estimated the number of units through an Internet search of each apartment complex.

⁵ HTC Property Inventory (as of July 26, 2018 Board Meeting). This number is an estimate of properties that are beyond the 15-year compliance period based on allocation year, but may include 9% properties otherwise ineligible to go through the qualified contract process because the owner committed to a longer compliance period.

⁶ *Id.* Properties allocated tax credits after 2001 must remain affordable for a minimum of 30 years. This number is an estimate based on allocation year, and may be inclusive of properties whose owners elected longer affordability terms, making them ineligible to exit the LIHTC program after 30 years.

⁷ HTC Property Inventory (as of July 26, 2018 Board Meeting). This is an estimate of eligibility based on allocation year. These numbers may include properties that are not actually eligible until a later date because the development owner elected to provide a longer compliance period.

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¹¹ 26 USC §42(g).

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¹³ *Id.* at §(g)(1)(A).

¹⁴ Consolidated Appropriations Act (2018) 115th Congress, Second Session, P.L. 115-141, available at <file:///C:/Users/lal3242/Downloads/18032202.pdf>; see also Keightley, M.P., Congressional Research Service, “An Introduction to the Low-Income Housing Tax Credit (March 28, 2018), available at <https://fas.org/sgp/crs/misc/RS22389.pdf>.

¹⁵ Keightley at p. 6.

¹⁶ 26 USC §42(g)(2)(A).

¹⁷ *Id.* at §(h)(6)(E)(i)(II); see also 10 TAC §10.408(a).

¹⁸ 10 TAC §10.408(a).

¹⁹ TDHCA, Preservation Multifamily Clearinghouse, available at https://public.tdhca.state.tx.us/pub/T_HF_CLEARINGHOUSE.main.

²⁰ 10 TAC §10.407(h)(1).

²¹ *Id.* at §(h)(2).

²² Laura Abernathy, National Housing Trust, “Qualified Contracts Threaten Affordable Housing Preservation” (June 25, 2018), available at <http://www.nationalhousingtrust.org/news-article/qualified-contracts-threaten-affordable-housing-preservation>.

²³ The qualified contract price is set by federal law and combines the fair market value of the non-low-income portion of the building and the value of the low-income portion of the building, which is an amount not less than the applicable fraction of existing debt, adjusted investor equity and other capital contributions, less project cash distributions. 26 U.S.C. §42 (h)(6)(F).

²⁴ Tex. Gov’t Code §2306.185(c).

²⁵ Tex. Gov’t Code §2306.185(c) & 10 TAC §10.408(b).

²⁶ Tex. Gov’t Code §§2306.6725(b) & .6726(a).

²⁷ 10 TAC §10.408(c)(1)(B).

²⁸ 26 USC §42(i)(7)(A).

²⁹ Tex. Gov’t Code §2306.6726(a).

³⁰ 10 TAC §10.407(f)(3).

³¹ 10 TAC §10.407(a)(1).

- ³² 10 TAC §10.407(a)(2).
- ³³ Information obtained from a Public Information Request on August 6, 2018, in which we requested LURAs from all properties that had amended their ROFR provision since 2015.
- ³⁴ 10 TAC §10.407(c)(2).
- ³⁵ 10 TAC §§10.407(d) & (a)(1).
- ³⁶ Tex. Gov't Code §2306.6726(a-1).
- ³⁷ See 10 TAC §§10.407(a)(6) & (7).
- ³⁸ The IRS sets a safe harbor for a ROFR price at "not less than the minimum purchase price," which is defined as the sum of all debt secured by the building that was incurred more than 5 years prior to the date of the sale and all federal, State, and local taxes "attributable to the sale." 26 IRC §42(i)(7).
- ⁴⁰ 10 TAC §10.407(b).
- ⁴¹ 10 TAC §10.407; see also 26 USC §42(i)(7)(B).
- ⁴² 10 TAC §10.407(b)(1).
- ⁴³ Texas Senate Bill 322, 77th Regular Session.
- ⁴⁴ Texas Senate Bill 322, §1.23, 77th Regular Session, codified in Texas Gov't Code §2306.256.
- ⁴⁵ Tex. Gov't Code §2306.185(a).
- ⁴⁶ HUD, Office of Policy Development and Research, "Preserving Affordable Rental Housing: A Snapshot of Growing Need, Current Threats, and Innovative Solutions," Evidence Matters (Summer 2013), available at <https://www.huduser.gov/portal/periodicals/em/summer13/highlight1.html>.
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- ⁴⁹ Melissa Taboada, "Austin school district's enrollment drops for 5th straight year," Austin Statesman (Sept. 25, 2017), available at <https://www.statesman.com/news/20170928/austin-school-districts-enrollment-drops-for-5th-straight-year>.
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- ⁵¹ Kaufman, Tracy, National Housing Trust, "Why Preservation Matters" (2015), available at <http://housingforum.phfa.org/slides/2015/11.%20tracy%20kaufman.pdf>.
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- ⁵³ Information obtained from a Public Information Request to TDHCA on August 6, 2018, and from TDHCA's Preservation Multifamily Clearinghouse. The unit estimate is from total number of units at each property. Almost all the properties which we have seen LURAs for have 100% affordable units, so this is a reasonable estimate.
- ⁵⁴ Information obtained from a Public Information Request to TDHCA on August 6, 2018. Additionally, as of July 2018 there are 8 properties across the state listed for sale through TDHCA's Preservation Multifamily Clearinghouse. Listed properties, their appraised fair market value, and QC price can be found on TDHCA's website: https://public.tdhca.state.tx.us/pub/T_HF_CLEARINGHOUSE.list_for_sale.
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- ⁶⁰ This information was confirmed in an email from TDHCA's general counsel, Beau Eccles, on October 17, 2018. (stating that, "it is [TDHCA's] position that an acquiring owner would have to go through the ROFR process, anew, prior to being eligible for a QC."
- ⁶¹ CHFA, Press Release, "Housing leaders partners to preserve affordability of Colorado rental units," (May 8, 2017), available at <https://www.chfainfo.com/news/Pages/05082017-preserveaffordability.aspx>.
- ⁶² CEDAC, 2016 Annual Report, available at <https://cedac.org/wp-content/uploads/2017/05/CEDACAR2016-2.pdf>, at p. 21.

⁶³ Community Investment Corporation, Press Release, “CIC Invests \$70 million to improve and preserve Chicago’s affordable rental housing in 2017,” available at <http://www.cicchicago.com/cic-invests-70-million-improve-preserve-chicagos-affordable-rental-housing-2017/>.

⁶⁴ In Texas, for-profit investors have been targeting LIHTC properties for early qualified contract exits that would not typically be considered at high risk of exiting the LIHTC, finding that they can increase the re-sale value of the property by stripping the compliance responsibilities off of an LIHTC property, even if the rents will remain the same after exiting the LIHTC property.

⁶⁵ This information is based on a call with Beth Truby, Preservation Program Manager at HPN, on March 28, 2018.

⁶⁶ California Housing Partnership Corporation, “CHPC Preservation Database Access Policy,” available at <https://1p08d91kd0c03rlxhmtydpr-wpengine.netdna-ssl.com/wp-content/uploads/2018/06/Preservation-Database-Access-Policy.pdf>.

⁶⁷ Id.

⁶⁸ Community Economic Development Assistance Corporation, “About,” available at <https://cedac.org/housing/about/>.

⁶⁹ CEDAC, “Housing Preservation,” available at <https://cedac.org/housing/housing-preservation/>.

⁷⁰ Id.

⁷¹ Preservation Compact, “2017 Preservation Compact Biannual Report,” at p. 3, available at http://www.preservationcompact.org/wp-content/uploads/TPC-2017-Biannual-Report.final_.pdf.

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⁷⁴ Id.

⁷⁵ Information based on a phone interview with Stacie Young, Director, Preservation Compact, on April 16, 2018.

⁷⁶ Based on interview with HPN on March 28, 2018.

⁷⁷ D.C. Preservation Catalog, available at <http://dcpres.urban.org/dcp/>.

⁷⁸ NLIHC & PARHC, “Balancing Priorities: Preservation and Neighborhood Opportunity in the Low-Income Housing Tax Credit Program Beyond Year 30” (October 2018).

⁷⁹ Id., at 14-15.

⁸⁰ Id., at 15-16.

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⁸² Roger Herzog and Bill Brauner, “State Housing Preservation Priorities” (June 22, 2009), available at http://www.prezcat.org/sites/default/files/MA%20Preservation%20Matrix_0.pdf.

⁸³ Enterprise Community Partners, “Colorado Housing Preservation Network Media Fact Sheet,” available at <https://www.enterprisecommunity.org/sites/default/files/media-library/news-and-events/Media%20Fact%20Sheet%20and%20Developments%20List.pdf>.

⁸⁴ CHFA’s effectiveness is anchored by having a strong, long-standing commitment to housing preservation.

⁸⁵ See Colorado Housing Preservation Network Media Fact Sheet.

⁸⁶ Preservation Compact, “Partner Organizations,” available at <http://www.preservationcompact.org/about-us/partner-organizations/>.

⁸⁷ Information based on phone interview with Stacie Young, Preservation Compact, on April 16, 2018.

⁸⁸ Id.

⁸⁹ Preservation Compact, “2017 Preservation Compact Biannual Report,” at p. 17.

⁹⁰ Information from a phone interview with Bill Brauner, CEDAC, on April 9, 2018.

⁹¹ Emily Achtenberg, “Chapter 40T at 5: A Retrospective Assessment of Massachusetts’ Expiring Use Preservation Law,” May 2015, available at <https://cedac.org/wp-content/uploads/2016/06/Chapter-40T-at-5-6.2.15-1.pdf>.

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