

QAP Definition and Effective Input

for the 2019 Utah Housing Conference

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Section 42(m)(1) Definition of a QAP

- Must contain at least the required 10 selection criteria
- Must give preference to projects:
 - serving the lowest income tenants
 - for the longest periods, and
 - are located in
 - qualified census tracts and
 - contribute to a concerted community revitalization plan

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Section 42 Does Not

- Say how to include the selection criteria
- Explain what it means to give a preference
- Define any the terms used (other than QCT)

Perhaps these are covered in IRS guidance...

Treasury Regulation & Guidance

- Not unique for a statute to be broad
- Treas. Reg. § 1.42-17(a) has requirements for QAPs:
 - “(1) In general. [Reserved]”
 - “(2) Selection criteria. [Reserved]”
- Only allocation guidance in the last decade:
 - Rev. Ruling 2016-29, local notice requirement not a basis for allowing vetoes
 - Notice 2016-77 explains revitalization plan preference applies only if there will be more than the project itself
- Specifics are best left to allocating agencies

Selection Criteria

- Note different specificity between the first and last three
- Technically could discourage, even make ineligible



Project location



Housing needs characteristics



Project characteristics



Sponsor characteristics



"special needs"



Public housing waiting lists



Households with children



Intended for eventual tenant ownership



Energy efficiency



Historic nature of the project

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Other Section 42 Provisions

- 90% maximum of LIHTCs to for for-profits
- Complete a market study
- Allocation may not exceed what is necessary
- Can preclude qualified contract requests
- Discretionary basis boost (JCT explanation)
- Application to tax-exempt bonds

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Correcting Misconceptions About QAPs

- No approach is inherently better, just different
 - each can work well, or not
- In particular, objective is not superior
 - presumes correct criteria and/or
 - a concern with use of discretion
- Predictability and competition are mutually exclusive
 - cannot know what others will submit
 - ultimately comparative
- Competition is not necessary for quality outcomes
 - high threshold standards

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Influencing Outcomes

- Agencies consider all input, but not all comments are equally effective
- Self-interest usually is the motivation
 - okay to admit
 - still important and worthwhile
- Agencies need feedback from knowledgeable participants
 - few have research staffs
 - academic community is not engaged

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Effective Input

1. Most important: be specific!
 - show word for word if possible
 - agencies rarely can act on general statements
2. Submit early and more than once.
 - ideally before the first draft
 - do not just repeat, advance the discussion
3. Express support for favorable policies.
 - no provision is universally popular
 - someone else may object

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Effective Input

4. Focus on substance rather than style.
 - emails are just as good, if not better than letters
 - time spent on language can result in missed chances
5. Be realistic and fair.
 - understand limitations of the agency and program
 - don't spin facts for third parties
6. Patience is key.
 - have not wasted time even if change doesn't happen
 - the idea may happen next year

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Ongoing Approach

Most effective if more than once a year

Sign up for agency announcements

Check multiple sources of trade press

Attend all listening sessions, public hearings, etc.

Immediately read anything posted to the website

Speak with agency staff

Should be at least annual

Informal conversations are fine

Can make your case, but...

Far more important to learn their perspective

Knowing objectives and limitations will shape comments

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