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April 17, 2013

Debra Urban  
Director of Tax Credits  
New Jersey Housing and Mortgage Finance Agency  
637 South Clinton Avenue  
P.O. Box 18550  
Trenton, NJ 08650-2085

**Re: Comments to the Amendments to the Qualified Allocation Plan (QAP)  
proposed by the New Jersey Housing and Mortgage Finance Agency  
(Agency), 45 N.J.R. 530(a)**

Dear Ms. Urban:

Fair Share Housing Center (FSHC) submits these comments in response to HMFA's proposed amendments to the Qualified Allocation Plan (QAP) at 44 N.J.R. 1818(a). FSHC previously commented on HMFA's 2002 and 2003 QAPs, and challenged these plans in court, In re Adoption of 2003 Low Income Housing Tax Credit Qualified Allocation Plan, 369 N.J. Super. 2 (App. Div. 2004).<sup>1</sup> That decision found that HMFA has a duty to administer the QAP in accordance with the federal Fair Housing Act, a standard that has been bolstered by other more recent rulings in other states. See, e.g., Inclusive Communities Project v. Texas Dept. of Housing, 749 F. Supp. 2d 486 (N.D.Tx. 2010).

FSHC's comments since the 2002-03 litigation have focused on ensuring compliance with both the federal Fair Housing Act, including the requirement to affirmatively further fair housing, 42 U.S.C. §3608(d), and the state Mount Laurel doctrine. Those legal requirements require tax credits to not only create or preserve shelter, but also to address New Jersey's deep racial and economic segregation.

The amendments proposed last year and now further refined in this reproposal are the most substantial since the changes made at the time of FSHC's lawsuit. Our comments in this document are generally aimed at areas that have changed in this reproposal; the omission of comments on other topics that have not changed does not indicate a withdrawal of those comments nor an agreement with HMFA's responses to those comments.

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<sup>1</sup> FSHC incorporates its 2002, 2003, 2007, and 2011 comments on prior QAPs and 2012 comments on the earlier version of the currently proposed QAP as reference points. We have not included copies of our prior comments with this document as they were already submitted to HMFA at the time of those rulemakings, but can provide them upon request.

### **5:80-33.4, -33.5, -33.6, -33.7 Urban/Suburban Split**

**Comment:** The overall points and set-asides structure is very heavily biased towards TUMs, which include the most racially and economically segregated communities in New Jersey. The proposed QAP appears to recognize this bias in its provision in N.J.A.C. 5:80-33.4 -33.5 and -33.6 to allocate at most 40 percent of credits to TUMs. Absent such a provision, all or nearly all tax credits would be allocated to those areas.

**Comment:** Only 28 percent of New Jersey residents live in TUMs according to the 2010 Census, yet HMFA proposes to allocate 40 percent of tax credits to these areas, and potentially even more given the mixed-income will go 50% towards these areas and the provision regarding allocating slightly over 40 percent in some circumstances; also see comment below re Final Cycle. Furthermore, these areas include a disproportionate share of existing lower-income housing and African-American and Latino residents, as FSHC's prior comments have discussed. This policy would disproportionately further existing patterns of racial and economic segregation. HMFA should explain why it proposes to disproportionately allocate tax credits towards these areas in a proportion even greater than their population share to an even greater degree than the prior proposal, given the narrowing of the TUM definition, and that continues to perpetuate segregation. If the TUM definition is to be narrowed, it should follow that the percentage of credits to TUMs should be reduced accordingly.

**Comment:** We support the overall addition of a required split to the supportive housing cycle and appreciate the Agency's consideration of our prior comment. We maintain that the percentage should be higher for suburban areas consistent with our comments above.

**Comment:** We appreciate the Agency's change to the mixed-income set-aside to replace QCTs as the defining criteria with TUMs. However, we note that the 50/50 split here is less than the 60/40 overall split, which is a cause for concern. We also are not sure why it would encourage more applications to award based on the tiebreaker alone instead of the highest point scoring project as the Agency claimed in response to prior comments.

**Comment:** How does the urban/suburban split impact the Final Cycle? If there is not any split in that cycle, it is likely that overall the 60/40 split that HMFA has previously said is necessary to affirmatively further fair housing will not be maintained.

### **5:80-33.4 Family Cycle Set-Asides and Cost Cap**

**Comment:** We support the change to the preservation set-aside to remove the absolute bar on projects with low REAC scores as an appropriate response to the issue. We still maintain our concern that the set-asides in the family cycle will likely result in additional tax credit money going into New Jersey's most racially and economically segregated areas, as previously addressed in our 2012 comments.

**Comment (also applies to N.J.A.C. 5:80-3.5, -3.6, -3.7):** Often, development outside of areas of concentrated poverty is higher because of high land costs and the lack of interest of local governments in providing supplemental subsidies. The total development cost cap and the cap in tax credits per unit systematically disadvantages developments outside of areas of concentrated poverty and racial segregation, which the changes in this version of the QAP do not address (e.g. land costs should be excluded in high-cost communities). This is especially an issue today because of the reduction in other funding sources available due to the Christie Administration's attempts to divert sources such as Balanced Housing and municipal trust funds.

### **5:80-33.9(a), -33.12(a) Density Bonus**

**Comment:** Does the Agency intend for the change from “created” to “granted” for density bonuses to change the situations in which this regulation applies, or simply to be a clarification of wording that does not effect any legal change?

### **5:80-33.12(c)(6)(x) Municipal Housing Trust Funds**

**Comment:** COAH has not approved any spending plans to our knowledge in nearly a year. Please explain how the Agency will address projects in which there is a commitment from the municipality for trust fund spending and it has done everything it can to provide that commitment, but COAH has not provided any review.

### **5:80-33.12(c)(17) Projects Located in Census Tracts with Existing LIHTC**

**Comment:** As noted before, we generally support this new concept to help ensure that there is not an overconcentration of LIHTC units in any particular Census tract. The Agency claimed in response to prior comments that extending the regulation to other assisted housing would be impractical; however, DCA publishes a Guide to Affordable Housing and HUD has easily accessible databases of federally assisted housing that would allow for a more rational definition. There is no reason why building a new LIHTC development in a Census tract with 30% LIHTC housing should be treated differently from building a new LIHTC development in a Census tract with 15% LIHTC housing and 15% project-based section 8 for example.

### **5:80-33.15 Scoring for Family Cycle**

**Comment:** Extra points for developments outside of QCTs are not unreasonable, especially in balance with set-asides that favor QCTs. However, it is important to point out that simply locating developments outside of QCTs by itself does not create an urban/suburban balance or affirmatively further fair housing. As such, the extra points for areas outside of QCTs by themselves have little if any impact on fair housing requirements. Our 2012 comments describe this issue further; we disagree strongly with HMFA’s statement in response to those comments that “the commenter’s perceived skewing of the proposed point category toward UTAs is offset by the additional five points proposed to be awarded to projects located in non-QCTs at N.J.A.C. 5:80-33.15(a)1i.” As noted in our 2012 comments in more detail, there are large numbers of non-QCTs in urban areas — including in every major New Jersey city, from Camden to Newark to Trenton and beyond — and as a simple QCT/non-QCT distinction does nothing to ensure that projects that promote racial and economic integration get built. Developers that are savvy enough to find non-QCT, but still segregated, locations — and there are thousands of them — will get full points.

**Comment:** We continue to oppose the reduction from 30 percent large bedrooms to 25 percent large bedrooms which discourages the development of housing serving larger families. While the 5 percent large bedroom for TODs is better than nothing, it is a very small share given demand and need and highly problematic in the context of a QAP that overall focuses more attention on TOD. Even if fair housing goals are otherwise achieved, they will not benefit families with children which are a group of key concern in both state and federal civil rights law.

**Comment:** We continue to oppose points for county/municipal/PHA support as they amount to a local veto for any high-opportunity municipality that wants to block a development. If a municipality wishes to block a development – as has happened numerous times with recent HMFA awards, most recently in Cherry Hill Township, Jackson Township, and Manalapan Township – it now only needs to withhold financial support from the development. The sliding scale of support amounts does not address this problem.

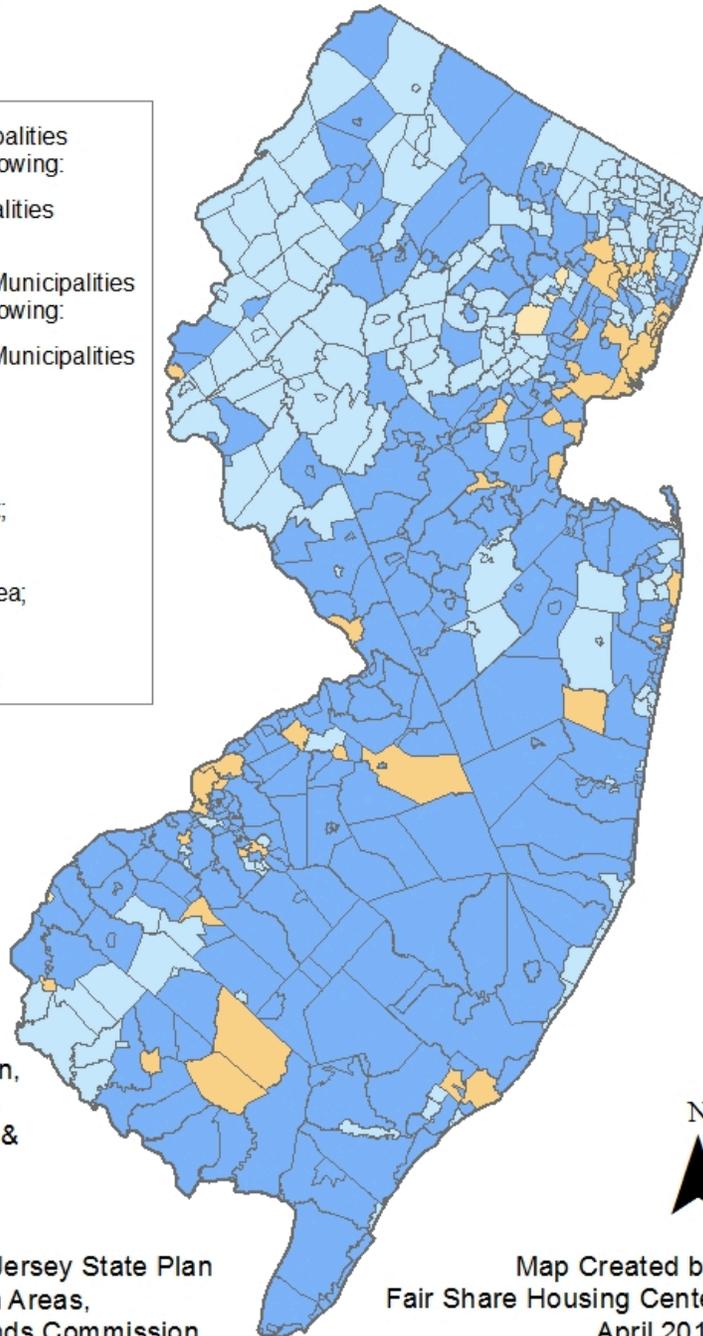
**Comment:** As we previously noted, the addition of five points for “Projects located within both a ready to grow area and any of a Transit Village, an Urban Transit Hub, a Main Street Designated District, a neighborhood that is the subject of an approved “neighborhood revitalization plan” as defined at N.J.S.A. 52:27D-491, an “area in need of redevelopment” as defined at N.J.S.A. 40A:12A-3, an area in need of rehabilitation, a Designated Center or an area that is the subject of a Choice Neighborhoods Transformation Plan funded by HUD or projects that are located within a ready to grow area and are included in a HOPE VI proposal approved by HUD” skews the QAP heavily towards Targeted Urban Municipalities (TUMs). Essentially all urban areas are designated centers in their entirety.

Using data from the State of New Jersey, FSHC undertook an updated analysis of how frequently these designations appear both inside and outside TUMs and found that they occur much more frequently inside TUMs. As the map below shows, 92 percent of TUMs include at least one area that would receive points under this category, while only 59 percent of non-TUMs do.

As such, the narrowing of Ready to Grow points to only include these designated programs places a heavy bias towards TUMs in the Qualified Allocation Plan. This point scoring provision, which at 5 points is likely to make or break many applications, skews heavily towards reinforcing existing concentrations of segregation.

**Comment:** The changes to the Ready to Grow areas appear to include substantial areas of the Pinelands that were not previously included, but no similar areas in the Highlands. What is the reason for this distinction?

## Impact of Ready to Grow Point Category in Proposed QAP



**Sources:**

- Neighborhood Revitalization, Main Street Districts, Areas in Need of Redevelopment & Rehabilitation: NJDCA
- Transit Villages: NJDOT
- Transit Hub: NJTransit
- Designated Centers: New Jersey State Plan
- Pinelands Regional Growth Areas, Villages, Towns: NJ Pinelands Commission

Map Created by:  
Fair Share Housing Center  
April 2013

**Comment:** Based on data from the State of New Jersey, with the revised criteria 48% of TUMs and 60% of non-TUMs have at least some sites that will meet 3 of the 4 criteria in the brownfields/historic category. 52% of TUMs and 31% of non-TUMs have at least some sites that will meet 2 of the 4 criteria in the brownfields/historic category. And 0% of TUMs and 9% of non-TUMs only have sites that meet 0 or 1 of the criteria in this category. Overall, this category thus mainly prioritizes certain sites within TUMs and certain sites outside of TUMs, rather than creating a preference that is markedly biased either towards TUMs or towards non-TUMs.

In this way, these locational criteria are significantly more balanced than the locational criteria in the category prioritizing certain ready to grow areas, or the locational criteria in the set-asides, discussed above, which is positive; more generally as noted in our earlier comments, the addition of categories reflecting access to quality education, good jobs, and transit to the brownfields/historic category is a positive step towards reorienting the QAP to better connect residents to opportunity. That said, one balanced category does not suffice to overcome the bias towards more segregated areas that come from the other point categories.

#### **5:80-33.16, -33.17 Points for Senior and Supportive Cycles**

**Comment:** We incorporate our comments on proposed N.J.A.C. 5:80-33.15 to apply to proposed N.J.A.C. 5:80-33.16 and -33.17 as well.

**Comment:** Based on data from the State of New Jersey, 46% of TUMs and 31% of non-TUMs have at least some sites that will meet all 3 criteria in the brownfields/historic category in the senior cycle. 54% of TUMs and 46% of non-TUMs have at least some sites that will meet 2 of the 3 criteria in the senior brownfields/historic category. And 0% of TUMs and 23% of non-TUMs only have sites that meet 0 or 1 of the criteria in this category. Overall, this category in the senior cycle thus skews somewhat towards TUMs with the change proposed, though it is sensible to not include school quality for seniors.

Thank you for your consideration of our comments.

Sincerely,



Adam M. Gordon  
Staff Attorney

Exhibit A: Table showing population of TUMs According to 2010 Census

Exhibit B: Data on Brownfields/Historic Category Impact on TUMs and Non-TUMs

Exhibit C: Data on Ready to Grow Category Impact on TUMs and Non-TUMs

**Exhibit A: Table showing population of TUMs According to 2010 Census**

<b>Municipality</b>	<b>County</b>	<b>2010 Population</b>
Asbury Park City	Monmouth	16,116
Atlantic City	Atlantic	39,558
Bayonne City	Hudson	63,024
Bridgeton City	Cumberland	25,349
Camden City	Camden	77,344
Carteret Borough	Middlesex	22,844
Clifton City	Passaic	84,136
East Orange City	Essex	64,270
Elizabeth City	Union	124,969
Garfield City	Bergen	30,487
Glassboro Borough	Gloucester	18,579
Gloucester City	Camden	11,456
Hackensack City	Bergen	43,010
Hillside Township	Union	21,404
Hoboken City	Hudson	50,005
Irvington Township	Essex	53,926
Jersey City	Hudson	247,597
Kearny Town	Hudson	40,684
Lakewood Township	Ocean	92,843
Lindenwold Borough	Camden	17,613
Lodi Borough	Bergen	24,136
Long Branch City	Monmouth	30,719
Millville City	Cumberland	28,400
Mount Holly Township	Burlington	9,536
Neptune Township	Monmouth	27,935
New Brunswick City	Middlesex	55,181
Newark City	Essex	277,140
North Bergen Township	Hudson	60,773
Orange City	Essex	30,134
Passaic City	Passaic	69,781
Paterson City	Passaic	146,199
Pemberton Township	Burlington	27,912
Penns Grove Borough	Salem	5,147
Pennsauken Township	Camden	35,885
Perth Amboy City	Middlesex	50,814
Phillipsburg Town	Warren	14,950
Plainfield City	Union	49,808
Pleasantville City	Atlantic	20,249
Rahway City	Union	27,346
Roselle Borough	Union	21,085
Salem City	Salem	5,146
Trenton City	Mercer	84,913
Union City	Hudson	66,455
Vineland City	Cumberland	60,724
Weehawken Township	Hudson	12,554
West New York Town	Hudson	49,708
Willingboro Township	Burlington	31,629
Woodbury City	Gloucester	10,174
	<b>Total Population</b>	<b>2,479,647</b>
	<b>Percentage of New Jersey Population</b>	<b>28.20</b>
	<b>New Jersey 2010 Population</b>	<b>8,791,894</b>