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## Center for Equal Justice

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Ohio Housing Finance Agency  
57 East Main Street  
Columbus, OH 43215

Filed by email: [2016QAPMailbox@ohiohome.org](mailto:2016QAPMailbox@ohiohome.org)

Dear Ohio Housing Finance Agency:

On behalf of our low-income clients, the undersigned organizations appreciate the opportunity to comment on OHFA's first draft of the 2016-2017 Qualified Allocation Plan ("2016-2017 QAP First Draft"). We represent the low-income tenants that the Low Income Housing Tax Credit ("LIHTC") program is designed to serve, and we thank OHFA for the opportunity to provide feedback during the development of the 2016-2017 QAP. We appreciate OHFA's continued commitment to an ongoing dialogue with us on these issues. We support OHFA's engagement of community stakeholders in the effort to develop a policy-driven QAP process.

OHFA has addressed many of our core issues in the current draft; however, as outlined below, further changes are needed. We address the initiatives in detail in this letter.

**1. The QAP should increase incentives for developers to make rents affordable to people with extremely low incomes.**

We applaud OHFA's income targeting of various pools. As we have discussed throughout the 2016-2017 QAP planning process, quality housing opportunities for people with extremely low incomes are too rare. The 2016-2017 QAP First Draft addresses this issue by awarding up to ten points in the Income Targeting Section. Page 39. A set aside of units for targeting people with low incomes was created by both increasing the percentage of available units for extremely low-income individuals and by lowering the Area Median Income level to provide quality housing opportunities for those with extremely low incomes. Additionally, the 2016-2017 QAP First Draft targets a deep subsidy for a minimum of ten percent of units containing project-based rental assistance.

As written, *criterion d* on page 39 is unclear. Providing examples of the types of federal subsidies OHFA intends developers to use would be illustrative. Additionally, developers may not be able to meet this criterion at all if OHFA's intention is for project-based vouchers to be used for *criterion d*. A public housing authority may not provide a project-based assistance to more than twenty-five percent of the units per building. 24 C.F.R. § 983.56. The exception to the

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twenty-five percent cap is for “qualifying families,” which are either elderly or disabled families or families receiving qualifying supportive services. The supportive services do not need to be provided at the building. Making a separate criterion that addresses project-based vouchers with a cap of twenty-five percent or that meets the requirements for qualifying families would resolve this issue.

In addition to the existing criteria in the “Income Targeting” section of the 2016-2017 QAP First Draft, we urge OHFA to add another criterion: developments that give Housing Choice Voucher Program participants a priority on the waiting lists. This preference will provide opportunities for extremely low-income tenants to move to higher opportunity areas.

- 2. We support OHFA’s plan for creating a policy-based allocation pool that will target developments for low-income families in opportunity areas, and we urge OHFA to make rents in these developments affordable for low-income families.**

The maps created by the Kirwan Institute, which were the focus at many of the regional public forums, demonstrate that far too few LIHTC developments have been placed in areas of opportunity. OHFA has recognized this issue, and there was significant emphasis on using opportunity mapping for future LIHTC allocations throughout the 2016-2017 QAP cycle discussions.

It is unclear, however, if the current draft of the 2016-2017 QAP will actually lead to the placement of affordable housing in areas of opportunity. We recognize the concrete steps that OHFA has taken in the current draft to promote the development of such housing, which include a significant reduction to the points available for local support (as discussed more below) and the creation of incentives based on public transportation and education. These adjusted incentives may not produce housing in opportunity areas. We urge OHFA to set aside several awards for new construction in areas of opportunity. This will truly ensure that future maps demonstrate a better allocation of LIHTC developments.

In addition, despite their prominent role in the public forums, the 2016-2017 QAP First Draft largely ignores the use of opportunity mapping. As a result, we ask OHFA to address three main issues with the use of opportunity areas to ensure that new family developments are located in higher opportunity areas.

First, the draft makes only two references to an “Opportunity Index,” and those two references are marginalized by their inclusion in a long list of items that have a low maximum point total. The first reference to the Opportunity Index is for the new development family pools. Page 35. However, the Opportunity Index priority is included only in a list of seven such

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priorities, for which five points are awarded for each priority, with a maximum of ten points<sup>1</sup> available among the seven priorities. Pages 34-35. Similarly, the second reference to the Opportunity Index is for the HUD Rental Subsidy preservation pool, where having the development in an opportunity area earns up to five points among ten different priorities – again, with a maximum of ten points available among the ten priorities. Pages 50-51.

As currently drafted, a total of zero proposals in the 2016-2017 cycle could be submitted – let alone approved and developed – that take opportunity areas into account. To solve this problem, we urge OHFA to add to the family pool a stand-alone point award for developments located in high or very high opportunity areas, with affordable rents for low-income families.

As OHFA expands to opportunity areas, which may have somewhat higher rents, Housing Choice Voucher Program participants should be given priority on LIHTC development waitlists. This preference would be in addition to the current requirement of non-discrimination against voucher holders. Without a priority for vouchers, new opportunity-based developments may serve only a limited range of families and exclude people with extremely low incomes. In the alternative, OHFA should have a blanket requirement that the proposals for new family developments be located in opportunity areas.

Second, both references to the Opportunity Index discuss areas of “moderate to high opportunity.” This requirement is too low. Instead, OHFA should focus on development proposals located in high or very high opportunity areas. While not all developments must be placed in the very highest areas of opportunity, we believe that “moderate” areas are insufficient to meet the LIHTC program’s goals. The higher standard will help the LIHTC program achieve its underlying goal of stopping the cycle of poverty by giving residents the chance to earn a living wage and receive a quality education.

Third, the 2016-2017 QAP First Draft states that the Opportunity Index will “be made available on the OHFA website.” Because the emphasis on opportunity areas is a shift in how OHFA views LIHTC developments, we ask that the information be included on the OHFA website by the time the second draft is released. This will allow all stakeholders to fully understand how the use of opportunity mapping will affect the 2016-2017 proposals.

**3. The QAP should eliminate points for local support, especially in the pool for family housing in opportunity areas.**

The 2016-2017 QAP First Draft provides positive steps to eliminate points for local support. In the 2015 QAP, a proposed development could receive five points for a letter from an elected official and up to fifteen points for municipal support. As we explained in previous

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<sup>1</sup> The maximum point total appears to be ten; however, the section also mentions thirty points as the maximum. One of these is likely a typographical error, and it appears that ten points is the correct number.

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comments, these points resulted in unnecessary politicization of the LIHTC process and tended to allow opposition based on unlawful discrimination. By eliminating points for state legislative support and cutting down points for municipal support, the 2016-2017 QAP First Draft is a strong step in the right direction. We appreciate that when potential points for a local letter of support appear in the “local partners” section, OHFA allows developers to obtain those points in other ways. Page 33.

However, there remains a local development priority of five points in Ohio’s six largest cities for the Family, Senior, and Infill Development pools. Page 31-32. The priority requires a letter signed “by the appropriate chief administrative officer.” The cities have a limited number of priority designations. We concur with the statement of a city official at one of the regional meetings: both awarding points for local support and limiting the number of projects a city can support creates an unnecessary burden on local officials. Awarding points for local support may also result in increased expenditures, which have the effect of unnecessarily increasing development costs. In addition, we remain concerned that any points for local support could still steer developments away from opportunity areas into areas where LIHTC developments are already highly concentrated. As a result, we continue to advocate the elimination of points for local support, especially for new family developments in opportunity areas.

**4. The QAP should require family developments to serve larger families.**

We support OHFA’s addition in the 2016-2017 QAP First Draft of awarding points to developments with larger units. The 2015 QAP did not provide any incentives to serve and support larger families. In the new construction “family priorities” section of the new draft, five points are awarded to proposals that either have at least twenty-five percent of total affordable units at a three-to-four bedroom size or have at least ten percent of the total affordable units at a four bedroom size. Page 34. We appreciate this much-needed improvement.

We are concerned, however, that it will be too easy for developers to obtain points without opting to develop units with more bedrooms. The possible points for three and four bedroom units are only two of seven criteria available at the five-point level in the “family priorities” section, with ten points as the maximum possible point total among the seven criteria.<sup>2</sup> This initiative to provide affordable units to larger families is undervalued by being only one option for points among so many other options. One criterion – having developments give preferential treatment to households with children in at least fifty percent of the units – relates indirectly to having family developments serve larger families. However, the other four criteria – having the development located in a county with job growth for low and moderate wage earners, in a school boundary of a good school, in a county with a certain threshold of housing problems, or in an opportunity area – are all admirable goals that we support, but do not further the goal of

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<sup>2</sup> Again, the maximum point total appears to be ten; however, the section also mentions thirty points as the maximum. One of these is likely a typographical error, and it appears that ten points is the correct number.

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requiring family developments to serve larger families. Thus, the overlapping nature of these seven criteria and the ten-point maximum can create undesired results. For example, a developer could receive maximum points for creating a development that is not family friendly (i.e., does not have any three or four bedroom units) but is located within the boundaries of good schools and in a county with job growth among low and moderate wage earners.

Finally, the shift in developer fees from a cost based approach to a per unit approach may incentivize developers to increase the number of units in a development over the number of bedrooms in a unit. The ultimate result will be fewer housing units for larger families. We ask that OHFA consider this apparent disincentive when drafting its second QAP.

OHFA should not dilute the potential points for larger bedroom units by offering so many other options for points in the same category. LIHTC properties should provide adequately-sized housing for larger families that is located near performing schools for children *and* quality jobs for adults. Allowing developers to receive the maximum amount of points by meeting only one of those goals fails to meet the policy initiative of providing quality, affordable housing to larger low-income families.

**5. The 2016 QAP should address the needs of rural communities.**

We support OHFA's Rural Asset Preservation pool. As we said in our earlier comments, the USDA-RD program often provides the only available affordable housing options in rural areas. We also continue to encourage OHFA to look at new multifamily developments in rural areas and the preservation of existing Rural Development affordable housing, as the decades-old housing developments that are subject to the expiring 515 loans may not fit all of the housing needs in those areas.

**6. The QAP should continue to support visitability.**

We support OHFA's continued commitment to visitability requirements for new construction units. Page 87. However, we ask that OHFA change the 2016-2017 QAP First Draft's requirement that the visitability requirement apply only to the affordable units in proposed developments. In addition, OHFA should abandon its option for developers to seek a waiver of the visitability requirements via Form PPD-E01. There simply is no legitimate reason for any new development not to have the three visitability requirements detailed on pages 87 and 88 – regardless of whether the unit is designated as affordable or whether there are site or design limitations.

**7. OHFA should continue to fund Permanent Supportive Housing and Preservation developments.**

We applaud OHFA's continued use of both the Permanent Supportive Housing and Preservation pools. We also support OHFA's continued availability of 50 percent of PSH units at

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30 percent of the resident's income. As we have discussed throughout the QAP process, the LIHTC program should offer broad array of affordable housing options, and Permanent Supporting Housing and Preservation developments are two important pieces of that assortment.

**8. OHFA should require developments that receive tax credits to include a “good cause” addendum to their leases.**

The 2016-2017 QAP First Draft does not address the failure of tax credit leases to include a “good cause” addendum. As we discussed in our earlier comments, pursuant to 26 U.S.C. § 42(h)(6)(B)(i) and related IRS issuances, landlords may only terminate or fail to renew a LIHTC lease for good cause. If the addendum is not included in leases, both tenants and judges will remain largely unaware of the protections provided to tenants by the LIHTC program and the program's goal of providing and sustained affordable housing opportunities.<sup>3</sup> This simple change does not create any new rules or obligations; instead, it provides better notice to all parties of the existing rules. The result will be better compliance by management companies with existing rules and an increase in the number of residents that live in the LIHTC developments for the long term. Other states, including Pennsylvania, have included the good cause requirement as an addendum to the LIHTC lease.<sup>4</sup>

The absence of a good cause requirement in the text of LIHTC leases causes significant problems for tenants. For example, the landlord of a LIHTC property recently mailed notices to tenants informing them that their leases will soon end. The notice did not give any valid reason for the termination of the tenancy. Without competent legal representation and an attentive judge, these tenants likely will be removed from their housing – contrary to federal law and LIHTC program requirements.

As a result, we continue to advocate for the good cause requirement to be expressly contained in the lease.

**9. OHFA should emphasize the Section 811 Project Rental Assistance Program.**

We are excited about Ohio's Section 811 Project Rental Assistance Program and its inclusion in the 2016-2017 QAP First Draft in the Family Housing, Senior Housing, and Local Initiatives pools. The Section 811 Program is a positive step toward assisting individuals with disabilities with finding safe and affordable housing so that they may live in their desired communities.

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<sup>3</sup> As we discussed in detail in our earlier comments, the long-term stability of housing in opportunity areas is extremely important because it fosters stability in employment and educational opportunities.

<sup>4</sup> A copy of the lease addendum is available at [http://www.rhls.org/wp-content/uploads/Lease\\_Addendum.pdf](http://www.rhls.org/wp-content/uploads/Lease_Addendum.pdf).

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However, similar to other criterion described in this letter, the Section 811 Project is minimized in the 2016-2017 QAP First Draft by including it last in a list of several other – sometimes conflicting – criteria. For example, in the “Income Targeting” section of the Family Housing Pool, an application may be awarded up to five points if it agrees to be considered for an award of Section 811. Page 39. But, it must do so at the exclusion of any other rental subsidies. Further, an award of Section 811 is not guaranteed. Another criterion in the same section allows points for developments with a minimum of ten percent of all units that contain project-based rental assistance from another State of Ohio agency. Consequently, it appears that these two criteria conflict and a developer may choose between them. Additionally, the “Income Targeting” section awards only a maximum of ten points for meeting multiple criteria. Because an award of Section 811 is not guaranteed and a developer could receive a maximum of only ten points, there is little incentive for a developer to agree to be considered for an award under the Section 811 Program.

We encourage OHFA to emphasize this important initiative by creating a stand-alone point award for developers who want to be considered for the Section 811 Program.

In conclusion, we support OHFA’s continued engagement of the community stakeholders in the development of the 2016-2017 QAP. As advocates of the low and very low income population, we appreciate the opportunity to provide our feedback as OHFA moves towards a policy-focused QAP process.

Sincerely,



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