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August 10, 2017

Christina Duran, Executive Director of LIHTC Allocations
NYC Dept. of Housing Preservation and Development (HPD)
100 Gold Street
New York, NY 10038

Dear Ms. Duran,

I am writing on behalf of the Fair Housing Justice Center (FHJC) to offer comments on the draft 2017 Qualified Allocation Plan (QAP) prepared by the New York City (NYC) Department of Housing Preservation and Development (HPD).

The FHJC is a regional civil rights organization that is dedicated to eliminating housing discrimination; promoting policies and programs that foster open, accessible, and inclusive communities; and strengthening the enforcement of fair housing laws. We serve all of NYC and the seven surrounding New York counties of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester. Our service area, which includes nearly 65% of the population in the State of New York, is characterized by extreme levels of residential racial segregation and poverty concentration. We are the only full-service fair housing organization based in New York City.

As you know, the City of New York has a legal obligation under the federal Fair Housing Act to “affirmatively furthering fair housing” by ensuring that all housing and community development activities are implemented in a manner that removes barriers to housing choice and reduces residential segregation. As your agency has critical housing finance responsibilities, including the allocation of low-income housing tax credits (LIHTC) to produce affordable housing throughout NYC, we believe its QAP should be structured to incentivize and encourage a more equitable distribution of LIHTC units to reduce segregation and expand affordable housing opportunities for lower income families in all NYC neighborhoods. In reviewing LIHTC data over a ten-year period (1/1998-12/2007), we noted that 91% of HPD’s LIHTC units were sited in high-poverty and predominantly minority areas with only 9% located mostly white areas.¹ This pattern of siting most affordable housing in a limited number of high-poverty and predominantly minority neighborhoods restricts the housing choices available to low-income households, increases poverty concentration, and perpetuates existing patterns of residential racial segregation. It is critical, in our view, that HPD modify its draft QAP to ensure that tax credits produce more affordable housing units for families in low-poverty neighborhoods that currently have few, if any

¹ Kawitzky, Freiberg, Houk, and Hankins. (2013). Choices Constrained, Segregation Maintained: Using Federal Tax Credits to Provide Affordable Housing. New York, NY: Fair Housing Justice Center. Retrieved from: <http://www.fairhousingjustice.org/wp-content/uploads/2013/08/FHJC-LIHTCREPORT-Aug13-Fullv1-7-WEB.pdf>

subsidized or affordable housing opportunities, in areas that often have lower crime rates, higher-performing schools, and other amenities.

First and foremost, the HPD QAP should explicitly state a commitment to affirmatively furthering fair housing. HPD's QAP does not address fair housing nor does it reaffirm HPD's role in advancing any fair housing goals. A commitment to affirmatively furthering fair housing should include requiring all LIHTC development applicants to submit a fair housing narrative that describes how the project location and type, tenant selection plan, and other applicable policies and procedures will further HPD's commitment to fair housing. The State of Massachusetts includes such language in its 2016 QAP. In this manner, HPD would translate a commitment to fair housing into practice, as well as ensure that housing units provide expanded choices and benefits to future tenants.

Second, we specifically recommend the following changes to the QAP to reduce residential segregation in the NYC region, expand housing choice, and foster the creation of more open, accessible, and inclusive neighborhoods:

- HPD should incentivize the development of family housing in low-poverty and non-minority areas; in areas with no concentration of LIHTC family housing or other subsidized family housing units; and in areas where land costs are higher, by way of substantial point allocations.
- HPD should offer points to incentivize the development of mixed-income family housing, which we noticed was included in past QAPs but, for some reason, is excluded from this year's draft. More points should be allocated to projects reaching very low-income occupants (lower than 50% AMI), as well as those providing market-rate units, to ensure that HPD is promoting racial and economic integration.
- As a threshold requirement, HPD should not make allocations to projects in distressed neighborhoods unless they have a concerted community revitalization plan (CCRP).
- HPD should refer to the preference requirements set forth in Section 42 of the Internal Revenue Code and state that no preference will be given to proposed LIHTC projects located in a qualified census tract "unless its development contributes to a [CCRP]." In this regard, HPD should define the parameters of a comprehensive revitalization plan and specify how it must benefit its "targeted areas," as well as include threshold criteria for LIHTC applications to meet for that community's CCRP. This definition can include: identifying resources committed to revitalization; outlining a well-defined geographic area; identifying housing and economic development activities; describing the community's existing infrastructure; and selecting meaningful and feasible goals, timelines, and metrics for achieving the CCRP's housing and non-housing development tasks.

Lastly, we offer a few comments on how HPD can best ensure that changes to its QAP are effective and serving populations most in need:

- Given the racially segregated nature of most New York City neighborhoods, it is our position that the City should prohibit the use of local Community Board preferences when filling affordable housing units to ensure that those units are equally open and available to all income eligible New Yorkers. While we recognize that there is pending litigation and this change may be beyond the scope of what your office can do right now, we want to register our concern that these

preferences represent a discriminatory barrier to housing choice that reinforces existing patterns of residential racial segregation.

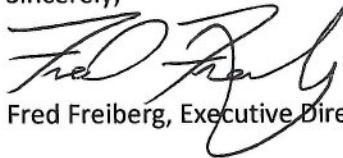
- We suggest that HPD conduct on-site inspections of newly constructed LIHTC housing developments to ensure compliance with state and federal accessibility requirements. Failure by a developer to comply with accessibility requirements should preclude that developer from participating in future LIHTC applications.
- We suggest that collecting extensive LIHTC occupancy data to evaluate whether housing is being provided on a nondiscriminatory basis and whether LIHTC sites are affirmatively furthering fair housing. Key demographics to include are race, national origin, number of households using rental subsidies, type of rental subsidy used, and whether the development is family or elderly housing.

We believe that modifying the QAP will expand housing choices and help to reduce residential racial segregation and poverty concentration. In response to a pending federal fair housing case regarding the disparate impact of LIHTC housing siting², Texas changed its QAP scoring criteria in 2013 to reduce racial segregation of tax credit developments and improve housing choice in low-poverty neighborhoods.³ The Supreme Court later ruled that disparate impact claims can be brought under the Fair Housing Act. The Texas Low Income Housing Information Service writes of the QAP's approach and its subsequent impact: "From 2006 to 2012, 68 percent of LIHTC awards went toward the production of units in tracts with black or Hispanic populations above the state average. **Since 2013, about half of awards have been in tracts with above-average white populations.**" [Emphasis ours.]⁴

New York City will soon commence a process to assess its efforts to affirmatively further fair housing with a report due to the Department of Housing & Urban Development (HUD) in April 2019. We suggest it is both timely and necessary that HPD look to establish new standards and thresholds in its QAP to ensure that low income tax credit housing is placed in all NYC neighborhoods and ensure that these housing opportunities are accessible to all New Yorkers.

We request an opportunity to meet with HPD staff responsible for the operation of the LIHTC program so that we can more fully discuss the concerns and suggestions described in this letter. We look forward to hearing from your office to arrange such a meeting soon. Thank you very much for your consideration.

Sincerely,



Fred Freiberg, Executive Director

² *Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc.*

³ Duncan, Charlie. (2017). "Report: Did Texas reduce government-funded segregation in tax credit housing?" <https://texashousers.net/2017/01/25/report-did-texas-reduce-government-funded-segregation-in-tax-credit-housing/> Accessed June 28, 2017.

⁴ Texas Low Income Housing Information Service. (2017). Fair Housing and Balanced Choices: Did Texas Reduce Government-Funded Segregation? An Analysis of 9%. Retrieved from: <https://www.scribd.com/document/337554364/Fair-Housing-and-Balanced-Choices-Did-Texas-Reduce-Government-Funded-Segregation/> Accessed June 28, 2017.