



October 21, 2013

Mr. Cameron Dorsey
Director of Multifamily Finance
Texas Department of Housing and
Community Affairs
221 East 11th Street
Austin, Texas 78701-2410

Dear Mr. Dorsey:

We offer these recommendations regarding the 2014 State of Texas Qualified Allocation Plan (QAP) for allocation of Low Income Housing Tax Credits (LIHTC).

§11.3. Housing De-Concentration Factors.

We strongly support the Housing De-Concentration goal of this section. Sections 11.3(b) and 11.3(d)(2) reference resolutions by local governing bodies that would exempt applications from certain limits addressing De-Concentration. We suggest that such resolutions be required to contain a statement that that governing body has examined the concentration of housing supported by low income housing tax credits in that jurisdiction, and that concentration does not constitute a barrier to fair housing choice, is consistent with local fair housing plans and will affirmatively further fair housing.

We support the language in section 11.3(e). Over-funding of elderly units in certain areas of the state limits the fair housing choice of families with children – a protected class under the Fair Housing Act - and the state has an obligation to affirmatively further fair housing for this population.

§11.4. Tax Credit Request and Award Limits.

11.4(c)(2)(A): Historically, all rural applications were made eligible for the 30% boost because it was difficult for rural deals to compete for the High Opportunity boost. However, High Opportunity points in rural areas are now calculated in a manner specifically targeting the unique nature of rural deals. Given this, we suggest the blanket availability of the 30% boost for rural deals is no longer needed, and undercuts the purpose of the rural high-opportunity points. We suggest removing the blanket rural boost and encouraging rural deals to compete

for the boost via the rural opportunity point calculation.

§11.5. Competitive HTC Set-Asides

The At-Risk Set-Aside (@ 11.5(3): The addition to section (C) of the option to relocate existing units in an otherwise qualifying At-Risk Development instead of rebuilding those units on site is an important and necessary change to the QAP.

First, while the preservation of affordable housing is both laudable and needed, the increasing amount of older subsidized housing that needs recapitalization and rehabilitation means that these incentives can have the effect of preserving affordable housing in neighborhoods that 1) have less need for affordable housing because families can easily use Housing Choice Vouchers to rent units and/or market rents are affordable to low-income families; and 2) are not high-opportunity, while allowing units in higher opportunity areas to be converted to market rate units. Public funds should not be used to lock-in historical patterns that have located affordable housing in segregated low-income areas.

Second, the existing location of the at-risk development may not comply with the Fair Housing Act. Rehabilitating or rebuilding developments in areas that are not high-opportunity, particularly in areas with high levels of racial segregation and concentrated poverty, violates the State and local governments' obligations to affirmatively further fair housing by investing public funds in a way that perpetuates and furthers racial segregation and denies housing to other protected classes including families with children and persons with disabilities.

Third, some existing LIHTC developments are located in areas with high levels of environmental risk. For example, the Prince Hall Village development in Port Arthur, Texas is located on the fenceline of the largest refinery in North America, close to two public housing developments. These developments are currently being relocated, in part because of the environmental risks to the families that live there. In an August 2011 letter, the Environmental Protection Agency noted that;

“the Carver Terrace housing project and adjacent playgrounds are located such that residents, including the children, are literally living *on the fenceline* of some of the largest oil and gas refineries in the United States. Accordingly, the residents of Carver Terrace face greater risks from air pollution (e.g. releases due to process malfunctions or inefficient equipment shutdowns), as well as a higher risk of emergency events (such as chemical and oil spills). Significantly, during hurricanes, these risks become amplified and more probable.”

The families in the LIHTC development face the same risks, but without the proposed change to the QAP, the development could not be moved to a safer area.

We support this change to the QAP, but would go further and require a location analysis of all developments to determine whether the proposed location – including the existing site –

complies with fair housing requirements. We further suggest that TDHCA include an environmental hazard proximity impact factor in the scoring criteria. Developments within certain distances of TCEQ clean-up sites, emissions sites, brownfields, etc. should receive lower scores.

§11.7. Tie Breaker Factors

We support the goals of this section, which is to encourage deals in higher opportunity, lower housing-tax-credit concentrated, areas of the state. In the spirit of constructive feedback, however, we note that the proposed language in 11.7(2) may aggravate the existing, problem of Housing Tax Credit units being located on the peripheral edges of populated areas. To address this, we suggest the 11.7(2) de-concentration tiebreaker be instead calculated as the application with the tract lower concentration index, where the index is calculated as **((existing HTC units + proposed HTC units)/households)**.

Given this is a tract-level calculation, it is still theoretically possible that two applications in the same census tract could tie. In that case, we suggest a final tie-breaker, unlikely to be reached, of the lower linear distance to the nearest post office. This arbitrary number would be uniquely available for every address in the state and would encourage units closer to, rather than farther, from services.

§11.9. Competitive HTC Selection Criteria

11.9(c)(4)(A): We strongly support the goals of the opportunity index as calculated for Urban Areas of the state. Texas' inclusion of school quality in its Opportunity Index is critical. While the poverty rate of the proposed Development Site is an important measure of opportunity, it does not by itself indicate access to opportunity or racial desegregation. Studies of the Moving to Opportunity (MTO) demonstration project found that despite the program's definition of a high-opportunity neighborhood as one in which fewer than 10% of the residents were below the poverty level, the low-poverty neighborhoods to which MTO families moved were still generally racially segregated, often within the same school system as the family's previous neighborhood, and less likely to have good employment resources and public services because of historic patterns of disinvestment in racially segregated minority neighborhoods.¹

Much as TDHCA currently limits opportunity points to areas with relatively low poverty rates, we encourage TDHCA to explore limiting Opportunity points to neighborhoods with crime

¹ See, for example, Orr, Larry, Judith D. Feins, Robin Jacob, Erik Beecroft, Lisa Sanbonmatsu, Lawrence F. Katz, Jeffrey B. Liebman, and Jeffery R. Kling [2003]. *Moving to Opportunity: Interim Impacts Evaluation*. Prepared for U.S. Department of Housing and Urban Development. Abt Associates Inc. and National Bureau of Economic Research; Kingsley, G. Thomas, and Kathryn L.S. Pettit [2008]. "Have MTO Families Lost Access to Opportunity Neighborhoods Over Time?" Three City Study of Moving to Opportunity, Brief No. 2, Urban Institute; Sanbonmatsu, Lisa, Jens Ludwig, Lawrence F. Katz, Lisa A. Gennetian, Greg C. Duncan, Ronald C. Kessler, Emma Adam, Thomas W. McDate, and Stacy Tessler Lindau [2011]. *Moving to Opportunity for Fair Housing Demonstration Program: Final Impacts Evaluation*. Prepared for U.S. Department of Housing and Urban Development. National Bureau of Economic Research.

rates below the median county or place level.²

11.9(c)(4)(B) We support the goals of the opportunity index as calculated for Rural Areas of the state, but question the effectiveness of the proposed scoring regime. The use of a "cumulative" point system with 16 possible points undermines the meaningful guidance provided by this section. We suggest changing the points available for the basic services items (ii), (iii), and (iv) from 2 points to 1 point. This would leave one point only available to general-population applications near schools with a "met standard" rating.

We suggest rewording 11.9(c)(4)(B)(iv) from "a child-care center that is licensed by the Department of Family and Protective Services" to "child-care facility that is licensed by the Department of Family and Protective Service as a licensed child-care center" to emphasize that licensed in-home providers do not qualify for these points.

§11.9. (d) Criteria promoting community support and engagement.

11.9. (d)(1) The points for Local Government Support in §11.9. (d)(1) should be reserved for resolutions containing a statement by the local government body that they have reviewed the application and their support or lack of objection to the application is consistent with their obligation to affirmatively further fair housing.

The high number of points allocated to Local Government Support has the strong potential to result in discriminatory impacts, including perpetuating racial segregation and making housing unavailable to families with children and persons with disabilities. Not only does the number of points present an almost insurmountable barrier for projects that do not receive resolutions of approval or non-objection, points for a resolution of approval in segregated minority areas would prioritize these projects over those in less segregated and higher opportunity areas. Because the forms of local government support eligible for points – resolutions of the local governing body commitments of local government funding – are likely to be tied together, local opposition to the proposed project is multiplied by the cumulative nature of the points.

§11.9. (d)(4)(C)(1): While we appreciate the state's efforts to recognize the higher level of difficulty obtaining support letters in certain neighborhoods, ongoing rewards to neighborhoods for historically opposing tax credit properties in their boundaries sets up inappropriate incentives for organizations to game the system with spurious letters of false opposition. We suggest these points be removed.

[11.9(d)(5)]: Community Support from State Representative: This item is statutorily required to be the eleventh-ranked scoring priority. However, the proposed language makes this the only scoring item eligible for both positive and negative points, effectively granting a 16-point spread between positive and negative support from a State Representative. This 16 point spread increases the ranking of this item in the scoring priority beyond the eleventh priority,

² Using sources such as the Texas Department of Public Safety or FBI Uniform Crime Reports.

and is not supported by the statutory language.

In addition to the fact that this ranking is not supported by the statutory language, it has the strong potential to result in discriminatory impacts, including perpetuating racial segregation and making housing choice unavailable to families with children and persons with disabilities. We suggest letters indicating lack of support by state representatives be scored zero points.

§11.9. (d)(6)(D): We support excluding input from community organizations that evidences unlawful discrimination against classes of persons protected by Fair Housing law or the scoring of which the Department determines to be contrary to the Department's efforts to affirmatively further fair housing. However, we believe this clause should be moved and expanded to cover all input regarding the application, including, but not limited to: Local Government Support resolutions [11.9(d)(1)], Quantifiable Community Participation [11.9(d)(4)], and Community Support from State Representatives [11.9(d)(5)].

§11.9. (d)(7)(A) and (B): The State of Texas and political jurisdictions such as counties and cities who are developing community revitalization plans and approving housing tax credit applications within such areas each have a responsibility to act in a manner consistent with the Fair Housing Act and the Executive Order directing recipients to "affirmatively further fair housing". The State, counties, and cities are under an obligation to eliminate discrimination and segregation and increase the supply of genuinely open housing.

In order to fulfill this obligation, the QAP should explicitly assess residential racial and ethnic segregation as a site condition and apply a preference to awarding housing tax credits to reduce rather than to reinforce residential segregation.

We agree with the QAP defining community revitalization areas and permitting the award of some low income housing tax credits within those areas. Because the HTC program creates housing units, the amount of credits awarded in community revitalization areas should be significantly less than those awarded in high opportunity, racially and ethnically integrated neighborhoods. The QAP must ensure that a predominant emphasis of the housing tax credit program is placed on developing housing available to African-American, Hispanic, Asian and other "minority" tenants in the form of open housing outside of segregated minority neighborhoods. A review of the TDHCA Housing Sponsor Report shows clearly that the predominant race or ethnicity of the neighborhood in which a housing development funded by TDHCA is located is highly correlated with the race/ethnicity of the tenants residing in that development. To produce open housing TDHCA must both award a significant portion of housing tax credits outside of minority segregated neighborhoods and compel developers and owners to engage in affirmative marketing plans that actually produce project level integration that is clearly not currently being achieved.

As one illustration of how to pursue community revitalization while achieving fair housing we point to the City of Houston DR program. We have negotiated a fair housing agreement with

the City of Houston. As part of selecting community revitalization areas the city considered and documented through experts the rates of neighborhood change economically and racially across the city and then selected areas as community revitalization areas. The designation of these areas required that the neighborhood could reasonably be expected, through private market forces and concentrated public investment in infrastructure and public services, to transition from high poverty, minority segregated neighborhoods into economically, racially and ethnically integrated neighborhoods. The city made a massive short term as well as a long term funding commitment to support this explicit integration outcome. The city has also chosen to invest CDBG-DR funds in multifamily development within these neighborhoods through a conscious effort to create mixed income housing at the development level.

We urge TDHCA to incorporate a similar approach in the QAP to define eligible community revitalization areas. A city or county designating a neighborhood as a community revitalization area must be required to do at least what the city of Houston did: produce a competent market analysis demonstrating that market forces can reasonably be expected, in combination with a major public investment in improved infrastructure and public services, to result in economic, racial, and ethnic integration. The jurisdiction must offer a long-term commitment of local improvements of public services and infrastructure.

An analysis of the ethnic and racial composition of government subsidized developments of all types in and around the proposed community revitalization area should be produced. The jurisdiction should be required to provide an acceptable strategy achieving the integration of government subsidized housing within the community revitalization area and explicitly address how the introduction of new housing tax credits will overcome existing patterns of racial, ethnic, and economic segregation in the area.

The commitment to achieve integration must also be explicit on the part of the jurisdiction. Community revitalization must go beyond building more and better government subsidized housing in the neighborhood because government subsidized housing alone will not result in racial and economic integration and may actually work against such integration. TDHCA must require the jurisdiction to acknowledge its commitment to comply with fair housing and affirmatively further fair housing. The jurisdiction must explicitly state that the community revitalization plan it proffers to obtain tax credits is part of the jurisdiction's deliberate plan to affirmatively further fair housing and that it consistent with the local Analysis of Impediments to Fair Housing. Without such a showing and commitment we suggest that the community revitalization plan is not an adequate commitment for the State to base an award of housing tax credits.

We also urge TDHCA's follow up monitoring of the outcomes of accepted community revitalization plans. At periods of time after construction of the tax credit developments in community revitalization areas, 2 years, 5 years and 10 years, an assessment of the ethnic/racial composition of the tenants in LIHTC developments in community revitalization areas and the populations in the surrounding neighborhoods should be undertaken to determine if the

criteria used to designate community revitalization areas and the public revitalization commitments produced the required outcomes. The eligibility criteria for community revitalization areas in future QAPs should be modified as appropriate based on these assessments.

§11.9. (d)(7)(B)(ii): We suggest the following edits to §11.9. (d)(7)(B)(ii):

(I) define specific target areas for redevelopment of housing that do not encompass the entire jurisdiction;

(II) ~~affirmatively address Fair Housing demonstrated through~~ be subject to administration in a manner consistent with an approved Fair Housing Activity Statement-Texas (FHAST) if a FHAST Form is in place within the jurisdiction;

(III) ~~be subject to administration in a manner consistent with the findings of an Analysis of Impediments approved or accepted by HUD within the last three (3) calendar years~~ ~~or an approved Fair Housing Activity Statement Texas (FHAST), approved by the Texas General Land Office;~~

(IV) certify that the plan and the Application are consistent with the adopting municipality or county's plan to affirmatively further fair housing under the Fair Housing Act (42 USC 3608(d)) and Executive Order 12892; and

(~~IV~~ V) be in place prior to the Pre-Application Final Delivery Date.

Sincerely,

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