

February 10, 2017

Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2016-77)
Room 5203 P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

Submitted electronically to Notice.Comments@irs.counsel.treas.gov

Re: Notice 2016-77 | Request for Comments – LIHTC “concerted community revitalization plan”

On behalf of the undersigned coalition of fair and affordable housing advocates, we thank you for this opportunity to comment on the Department of the Treasury’s (“the Treasury”) prospective guidance clarifying the requirement of § 42(m)(1)(B)(ii)(III). We appreciate the acknowledgment in Notice 2016-77 that a Low-Income Housing Tax Credit (LIHTC) project “is not described in § 42(m)(1)(B)(ii)(III) of the Internal Revenue Code unless its development contributes to a concerted community revitalization plan.” However, further guidance is needed to define the parameters of state CCRP definitions and to ensure that this statutory requirement is being followed.

Unfortunately, many state housing finance agencies do not follow the § 42(m)(1)(B)(ii)(III) requirements that a LIHTC proposal located in Qualified Census Tract (QCT) must contribute to a concerted community revitalization plan (CCRP) in order to receive preference under a state qualified allocation plan (QAP), while others fail either to define CCRP or to identify essential components of a CCRP.

To ensure that states’ and the Treasury’s administration of LIHTC programs conforms to statutory requirements, we recommend that the Treasury provide a general definition of “concerted community revitalization plan” that sets forth *minimum threshold criteria* to be used by state agencies in assessing LIHTC projects seeking preference under § 42(m)(1)(B)(ii)(III).

In setting forth these threshold criteria we urge the Treasury to issue a revenue ruling, or other illustrative guidance, that defines CCRPs consistent with these criteria. Minimum threshold criteria should require CCRPs to:

1. Set clear geographic boundaries for the community;
2. Describe the community, including its infrastructure, demographic characteristics, economic characteristics and trends;
3. Identify any planned or ongoing private or public development in the community;
4. Enumerate non-housing resources that have been committed to development;
5. Discuss the need for housing and non-housing development;
6. Reference any state and federal revitalization programs applicable to the community;
7. Select feasible and meaningful revitalization goals;
8. Identify barriers to housing and non-housing revitalization;

9. Delineate measures to be taken and a timeline for implementing those measures; and
10. Engage community partners and individuals in revitalization and planning.

The Statutory Language of § 42(m)(1)(B)(ii)(III) Requires That LIHTC Projects Contribute to a CCRP in Order to Receive Preference for Being Located Within a QCT.

In order to receive preference, a LIHTC project located within a QCT must also contribute to a CCRP. On this point, the statutory language of § 42(m)(1)(B)(ii)(III) is unequivocal. The preference described therein applies only to “projects which are located in qualified census tracts as defined in subsection (d)(5)(C)) *and the development of which contributes to a concerted community revitalization plan*” (emphasis added).

By using the words “concerted” and “community” to describe the requisite revitalization plan, the statute strongly suggests that such a plan must be deliberately designed and must incorporate non-housing elements. As Notice 2016-77 confirmed, “the development of a LIHTC project, without more” does not meet the requirement for contributing to a CCRP. Given that § 42(m)(1)(B)(ii)(III) requires a CCRP, state agencies that either ignore the CCRP requirement or improperly equate a single LIHTC project with the existence of a CCRP are in violation of the statute.

Placement of LIHTC-Supported Developments in Qualified Census Tracts Without a CCRP Exacerbates Concentrations of Poverty.

The Treasury and states’ LIHTC administration is a powerful means of pursuing federal housing policy goals: *i.e.*, decreasing concentrations of poverty and supporting individual families’ housing needs. In part, the Treasury can meet this promise by increasing the location of LIHTC units in neighborhoods and communities that offer high-performing schools, low crime rates, access to employment, mass transit, and access to necessities such as healthy food, parks and recreational facilities.

Unfortunately, LIHTC developments have been disproportionately concentrated in low-income and racially segregated, minority neighborhoods.¹ These neighborhoods typically offer limited opportunities for economic stability and educational success. A 2011 Department of Housing Urban Development (HUD) report found that LIHTC developments are often clustered together in neighborhoods with higher rates of poverty and lower rates of non-Hispanic whites.² Moreover, because LIHTC developments are rarely located in close proximity to high-performing public schools, the geography of LIHTC limits opportunities for school-aged children to fulfill their

¹ See, e.g., Ingrid Gould Ellen, Keren Horn, Yiwen Kuai, Roman Pazuniak, and Michael David Williams, *Effect of QAP Incentives on the Location of LIHTC Properties*, pp. 8-9 (2015).

² Casey J. Dawkins, Prepared for U.S. Department of Housing and Urban Development Office of Policy Development and Research, *Exploring the Spatial Distribution of Low Income Housing Tax Credit Properties*, Assisted Housing Research Cadre Report (February 2011); See also Lance Freeman, *Siting Affordable Housing: Location and Neighborhood Trends of Low Income Housing Tax Credit Developments in the 1990s*, (1994), finding that LIHTC neighborhoods contain disproportionate shares of minority residents. See also Jill Khadduri & Carissa Climaco, ABT ASSOCIATES, INC., *LIHTC Awards in Ohio, 2006-2015: Where Are They Providing Housing for Families with Children?* (2016), available at <http://www.abtassociates.com/reports/2016/lihtc-awards-in-ohio,-2006-2015-where-are-they-pro.aspx>.

educational potential.³ For children, growing up in neighborhoods with low-performing public schools, high rates of environmental health hazards, and frequent exposure to violent crime can have dire developmental consequences.⁴ Similarly, in *Inclusive Communities Project, Inc. v. U.S. Department of Treasury*, a federal district court recognized evidence that LIHTC projects have perpetuated neighborhood segregation along lines of race and poverty.⁵ This evidence includes “a finding in 1993 by the Government Accounting Office that federal LIHTC units were more likely than traditional public housing to be developed on sites in predominantly minority neighborhoods, public reports by HUD showing the perpetuation of racial segregation in the LIHTC program administered by defendants, . . . [and] evidence submitted to Treasury by the Poverty & Race Research Action Council in 2010 that showed the LIHTC program was being administered in a manner that perpetuated racial segregation.”⁶

By definition, a Qualified Census Tract (QCT) is an area with a majority concentration of low-income households.⁷ Predictably, allowing a “preference” for LIHTC developments in QCTs without a CCRP will exacerbate the concentration of low-income, minority residents in low-opportunity neighborhoods. For precisely this reason, projects that are located within QCTs receive QAP preference pursuant to § 42(m)(1)(B)(ii)(III) only if such projects also contribute to a concerted community revitalization plan—an actual plan for neighborhood revitalization and improvement. The Treasury is correct to issue guidance clarifying and reinforcing this point.⁸

In the absence of a CCRP, proposed LIHTC developments located in QCTs do not receive preference under the statute. Accordingly, state QAPs cannot award points pursuant to § 42(m)(1)(B)(ii)(III) to projects in QCTs that lack CCRPs, and the Treasury Department should clarify this restriction when issuing guidance that defines CCRPs, because state HFAs do not uniformly understand this point. Instead, many states give preference to LIHTC developments in QCTs irrespective of whether the project contributes to a CCRP.⁹ Other states favor developments that contribute to a CCRP, but do not define CCRP nor provide guidance on essential components

³ Ingrid Gould Ellen and Keren Horn, POVERTY & RACE RESEARCH ACTION COUNCIL, *Do Federally Assisted Households Have Access to High Performing Public Schools*, (2012).

⁴ See Amy Ellen Schwartz, Brian J. McCabe, Ingrid Gould Ellen, and Colin C. Chellman, *Public schools, public housing: The education of children living in public housing*. 46 URBAN AFFAIRS REVIEW pp. 68-89 (2010); Patrick Sharkey, Amy Ellen Schwartz, Ingrid Gould Ellen, and Johanna Laco, *High stakes in the classroom, high stakes on the street: The effects of community violence on students' standardized test performance*. 1 SOCIOLOGICAL SCIENCE pp. 199-220 (2014).

⁵ *Inclusive Communities Project, Inc. v. United States Department of Treasury*, 2016 WL 6397643, Slip op., October 28, 2016, No. 3:14-CV-3013-D (N.D. Tex.).

⁶ *Inclusive Communities Project, Inc. v. U.S. Dep't of Treasury*, No. 3:14-CV-3013-D, 2016 WL 6397643, at 35 (N.D. Tex. Oct. 28, 2016).

⁷ A Qualified Census Tract (QCT) is any census tract (or equivalent geographic area defined by the Census Bureau) in which at least 50% of households have an income less than 60% of the Area Median Gross Income (AMGI). HUD has defined 60% of AMGI as 120% of HUD's Very Low Income Limits (VLILs), which are based on 50% of area median family income, adjusted for high cost and low income areas.

⁸ See Internal Revenue Service, *Notice 2016-77*.

⁹ Jill Khadduri, POVERTY & RACE RESEARCH ACTION COUNCIL AND ABT. ASSOCIATES, INC., *Creating Balance in the Locations of LIHTC Developments: The Role of Qualified Allocation Plans*, p.2 (2013).

that must be included in a revitalization plan.¹⁰ A 2013 survey of state QAPs found that “most states either provide no definition of what constitutes a concerted community revitalization plan or limit that definition to the ... designation of a geographic area by a public entity as being covered by a plan or a program of some sort, but without further standards for ‘community revitalization.’”¹¹ In practice, without a bona fide definition of CCRP, state QAPs give preference to LIHTC applications solely for being located within a QCT. As discussed above, this practice results in the concentration of LIHTC and low-income residents in high-poverty communities that lack any plan to decrease poverty concentration or increase non-housing resources available to low-income residents. This outcome stands in direct contradiction with the goals § 42(m)(1)(B)(ii)(III), as confirmed in Notice 2016-77.¹²

Treasury Can Address Viable Concerns About Exacerbating Concentrations of Poverty by Stating Clear Minimum Threshold Criteria in a General Definition of CCRP.

The Treasury can address and correct these counterproductive trends in the administration of LIHTC. In particular, the Treasury can correct states’ inconsistent adherence to the statutory language of § 42(m)(1)(B)(ii)(III) by reiterating and expanding upon IRS “Notice 2016-77,” through a revenue ruling or other illustrative guidance. A revenue ruling may provide the greatest clarity, as such rulings are “official interpretation[s] ... of the Internal Revenue Code, related statutes, tax treaties, and regulations,” while also providing an example of the Code as applied to given facts.¹³ If the Treasury considers a revenue ruling inappropriate, we recommend that a notice be issued to “contain guidance that involves substantive interpretations of the Internal Revenue Code or other provisions of the law.”¹⁴ Regardless of the form, this guidance should identify clear minimum threshold criteria defining “concerted community revitalization plan.” By providing a set of minimum essential criteria for CCRPs and requiring states to apply these criteria in assessing LIHTC proposals, the Treasury can better administer LIHTC to provide affordable housing that enhances neighborhood vitality, rather than merely perpetuating race and income segregation. This new Treasury guidance will ensure that LIHTC projects located within QCTs are no longer, contrary to the statute itself, granted preference merely for being located within QCTs. Rather, such projects must demonstrate that they will contribute to a coordinated effort to provide both housing and non-housing resources and pathways to opportunity for community residents. Simply put, states will grant preference to LIHTC developments in low-opportunity neighborhoods only if such neighborhoods are reasonably likely to shift towards becoming high-opportunity. Additionally, by eliminating overbroad preferences for developments in QCTs that lack CCRPs, this new Treasury guidance will increase the relative competitiveness of LIHTC projects that are

¹⁰ POVERTY & RACE RESEARCH ACTION COUNCIL, *Building Opportunity II: Civil Rights Best Practices in the Low Income Housing Tax Credit Program (2015 update)* (2015).

¹¹ Khadduri, *supra* note 9 at p.11.

¹² See Internal Revenue Service, *Notice 2016-77* (“Placing LIHTC projects in qualified census tracts risks exacerbating concentrations of poverty. Therefore, § 42(m)(1)(B)(ii)(III) grants a preference to that placement only when there is an added benefit to the neighborhood in the form of the project’s contribution to a concerted community revitalization plan.”).

¹³ INTERNAL REVENUE SERVICE, CHIEF COUNSEL DIRECTIVES MANUAL, 32.2.2.3.1 (08-11-2004).

¹⁴ INTERNAL REVENUE SERVICE, CHIEF COUNSEL DIRECTIVES MANUAL, 32.2.2.3.3 (08-11-2004).

part of actual concerted community revitalization plans, as well as those located in currently high-opportunity neighborhoods.

Treasury’s Definition of CCRP and Minimum Threshold Criteria Will Guide State Agencies in Evaluating LIHTC Applications That Seek QAP Preference Points Pursuant to § 42(m)(1)(B)(ii)(III).

In order for revitalization efforts to succeed in meeting low-income families’ needs and de-concentrating poverty, affordable housing development must occur as part of a coordinated infusion of non-housing resources.¹⁵ The statutory language of § 42(m)(1)(B)(ii)(III) requires that LIHTC projects contribute to a *concerted plan for community revitalization*. The statute could have said simply “housing plan.” It did not. Rather the words “concerted” and “community” suggest that a plan must be deliberate and must incorporate a broad range of non-housing elements that collectively benefit the neighborhood.

For this reason, it is important that the Treasury provide an authoritative set of minimum threshold criteria for CCRPs. Once created, state housing finance agencies will use the Treasury’s minimum threshold criteria to assess LIHTC applications seeking preference under § 42(m)(1)(B)(ii)(III) for “projects which are located in qualified census tracts (as defined in subsection (d)(5)(C)) and the development of which contributes to a concerted community revitalization plan.” We recommend ten minimum criteria below, providing a description of each criterion and reference some best practices currently existing in states QAPs. The recommended criteria are organized with reference to the four words comprising the statutory phrase “concerted community revitalization plan.” By referring to the statutory language in this way, we seek to adhere to the meaning of the statute while illustrating relevant components of our recommended definition.

A Concerted Plan Will Describe Relevant Planned Development and Document Resources Committed to Revitalization by Private and Public Sources.

A concerted plan should be a committed and substantial plan with multiple collaborators, including members of the community and government. The plan should have a clear focus with high likelihood of achieving revitalization. In addition, the proposed LIHTC development should contribute to and benefit from the concerted plan.

Planned Public and Private Development

CCRP should include any public and private development that is either currently being constructed or planned. By describing other efforts to revitalize the area, a CCRP illustrates that the plan is a concerted plan with multiple collaborators. A plan has a higher chance of success if it has buy-in from both public and private developers. This development must necessarily include both housing and non-housing development. For example, Texas’s 2016 QAP directs the state housing credit agency to review plans based on “targeted efforts” to attract “private sector development of housing and/or business,” as well as

¹⁵ Khadduri, *supra* note 9 at p.2. Jennifer Turnham, Jessica Bonjorni, *Review of Neighborhood Revitalization Initiatives*, Prepared for Neighborhood Reinvestment Corporation, Abt Associates (2004).

develop health care facilities recreational facilities, and other amenities.¹⁶ Other states QAP's should similarly require assessment of planned and ongoing development.

We recognize that in a limited number of cities, rapid market development and gentrification may already be occurring in some high poverty census tracts, even in the absence of any identifiable "plan." In these situations, the CCRP requirement should not be used to further displace low income residents from the neighborhood. For this reason, we recommend that state housing credit agencies should have the option to waive one or more of the CCRP criteria if the state agency finds evidence that the census tract is experiencing market driven investment and rising income levels resulting in displacement of low income households, and LIHTC development is necessary to preserve the availability of affordable housing in the tract.

Committed Resources

To show that a plan has a high likelihood of success, CCRPs should describe any resources that have been dedicated to revitalization by public or private partners. In some states, CCRPs must already have other committed resources. The 2016 Texas QAP gave preference to projects in CCRPs with "sufficient, documented and committed funding" already "flowing in accordance with the plan."¹⁷ It requires that any barriers to revitalization be "sufficiently mitigated and addressed prior to the Development being placed into service."¹⁸ Similarly, the Colorado 2016 QAP requests sponsors to show "significant funding commitments," or "evidence of substantial major investment," to demonstrate "in measurable terms how the community will be impacted."¹⁹ States should be encouraged to set similar explicit standards to determine whether a plan is concerted.

A Community-Based Plan Should Pertain to a Specific Geographic Area and Should Define that Area's Characteristics Relevant to Revitalization Efforts.

While communities can take many shapes and may extend across very different areas, CCRPs should characterize the relevant community as a distinct entity so that resources are effectively marshalled for its benefit, rather than dispersed in an uncoordinated way.

Specific Geographic Area

A community plan must have defined geographic boundaries. Geographic boundaries may vary depending on their context. For example, in urban areas, socioeconomic conditions and access to amenities vary dramatically from block to block. Residential areas a mile away from a revitalization effort may be effectively excluded from that effort. Points should be awarded only for those proposed LIHTC developments that are truly proximate to a CCRP. For example, the 2016 Texas QAP states that CCRPs targeted areas "should be

¹⁶ TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, MULTIFAMILY HOUSING RENTAL PROGRAMS, 2016 Qualified Allocation Plan, p. 28 (2015), <https://www.tdhca.state.tx.us/multifamily/docs/16-QAP.pdf>.

¹⁷ *Id.* at 27.

¹⁸ *Id.* at 28.

¹⁹ COLORADO HOUSING AND FINANCE AUTHORITY BOARD OF DIRECTORS, *LIHTC Qualified Allocation Plan*, p. 51 (2015), https://www.chfainfo.com/arh/lihtc/LIHC_Documents/CHFA_QAP_2016.pdf.

a neighborhood or small group of contiguous neighborhoods with common attributes and problems.”²⁰ States should at a minimum follow Georgia’s requirement that CCRPs “clearly delineate a target area that includes the proposed project site.”²¹

Description of the Community

Just as the geographic boundaries must be defined in a community plan, the community itself must be defined. The community description should include structures and infrastructure; demographic characteristics and pressures; and economic characteristics and pressures. These static and dynamic elements of a community are necessary to effectively plan for its needs and potential. Further, by describing the community in detail, the CCRP is able to set realistic and meaningful goals, and a state housing credit agency is able to meaningfully evaluate those goals.

A Revitalization Plan Should Address Housing and Non-Housing Development and Should Reflect Any Related State and Federal Revitalization Programs in Play.

Housing and Non-Housing Development

Both housing and non-housing developments are necessary to revitalizing a community. Revitalization plans should therefore address both of these dimensions of revitalization. Without non-housing development, LIHTC may create new low-income housing in areas with few amenities, stranding low-income residents without access to transportation, job opportunities, good schools and commercial options. Pennsylvania’s QAP addresses this challenge by requiring that CCRPs include access to public transportation, health care choices, and community serving enterprises.²² Texas’s QAP similarly requires review of “targeted efforts” to address non-housing development.²³ Following these examples, states should be encouraged to prioritize access to and development of non-housing amenities.

Coordination with State and Federal Standards

Multiple state and federal programs address revitalization. For example, the HUD Choice Neighborhoods program gives grants to communities that create a Transformation Plan to revitalize their distressed neighborhoods. It focuses on housing infrastructure, economic opportunity, and non-housing neighborhood amenities.²⁴ A plan that fulfills the Choice Neighborhood requirements may satisfy CCRP requirements. Indiana’s QAP addresses this overlap. It gives additional points to developments that receive specific types of federal

²⁰ TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, *supra* note 16 at p. 28.

²¹ GEORGIA DEPARTMENT OF COMMUNITY AFFAIRS, *2016 Qualified Action Plan*, App. II, Scoring Criteria, p. 14,

<http://www.dca.state.ga.us/housing/housingdevelopment/programs/downloads/2016QAPDocs/QAP/2016QualifiedAllocationPlan.pdf>. *See also* PRRAC, “Creating Balance in the Locations of LIHTC Developments” (February 2013),

www.prrac.org/pdf/Balance_in_the_Locations_of_LIHTC_Developments.pdf.

²² Pennsylvania Housing Finance Agency Allocation Plan for Year 2016, page 7, *available at* http://www.phfa.org/forms/multifamily_program_notices/qap/2016_allocation_plan.pdf.

²³ TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, *supra* note 16 at p. 28.

²⁴ See

https://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/cn

assistance, such as HUD Choice Neighborhoods or a Department of Education-designated Promise Neighborhood.²⁵ Georgia’s QAP treats CCRPs, HUD’s Choice Neighborhoods Program, and “local government adopted revitalization plan[s]” as analogous criteria for LIHTC preference, each of which qualifies for three, ten, or two preference points, respectively.²⁶ As suggested in these examples, where state and federal programs are present, CCRPs should be coordinated with those programs to ensure consistency and efficient leveraging of existing resources.

A Plan Should Select Goals, Identify Barriers, Delineate Measures to Overcome Those Barriers, and Engage the Community.

Planning is an essential activity for revitalization of housing and non-housing community features. Although seemingly self-explanatory, plans are prescriptive documents that typically articulate 1) goals to be met, 2) obstacles to be overcome, 3) measures to be implemented and timelines for implementing those measures and 4) actors to whom necessary actions are assigned. We encourage the Treasury to treat these basic aspects of planning as minimum threshold criteria consistent with the other criteria posed above. These common elements of plans are contained in other affordable housing programs administered by HUD, including the Community Development Block Grant comprehensive plan and fair housing assessment requirements. CCRP’s should accordingly address these items and the Treasury’s ultimate definition should require such plans to:

Select Goals

State housing credit agencies should require CCRPs to state meaningful, achievable goals before any preference is awarded. In the aggregate, these goals should further the purposes and procedures of the LIHTC program. Goals should operate consistent with and in furtherance of the Treasury’s stated purpose of preventing the concentration of poverty in rural and urban areas. With these principles in mind, Treasury should highlight the following goals, guiding state agencies to consider if CCRPs include these or similar goals:

- Promoting mixed-income development;
- Protecting against loss of affordable units; and
- Generating housing and non-housing development.

CCRP’s are more likely to decrease concentrations of poverty if they facilitate the development of mixed-income neighborhoods. Accordingly, state QAP’s should give preference to CCRPs that set goals to create mixed-income development. Both Indiana and Pennsylvania have QAP’s that include point preferences for “mixed income” developments, although Indiana’s does not tie those points to a CCRP. Indiana’s 2016 QAP, for example, rewards up to five points for LIHTC that are part of federally assisted revitalization awards that 1) support mixed income development 2) “[f]acilitate the de-concentration of poverty,” and 3) “[p]rovide for community improvements or amenities.”²⁷ Pennsylvania’s QAP

²⁵ STATE OF INDIANA, *2016-2017 Qualified Action Plan*, p. 61, available at http://www.in.gov/myihcda/files/Final_2016-2017_QAP.pdf.

²⁶ GEORGIA DEPARTMENT OF COMMUNITY AFFAIRS, *supra* note 21 at pp. 14-15 (2015).

²⁷ STATE OF INDIANA, *supra* note 25 at p. 61.

reserves credits for at least three “developments which support a broader community revitalization program which ... focused on implementing a ‘mixed income’ strategy.”²⁸ Not every CCRP need to state this as a goal. However, QAPs should encourage such mixed income goals through a point preference or qualitative preference.

With respect to protecting affordable units, the needs and pressures on communities vary considerably. Some neighborhoods face intense development pressure, and will feature significant housing and non-housing development. In these neighborhoods, new development may displace low-income tenants. Increasing rents may also drive low-income residents to more affordable but less desirable neighborhoods. This dynamic perpetuates concentrations of poverty and CCRPs should counter it by protecting against the loss of affordable units.

In contrast, in neighborhoods with little development pressure and few resources, non-housing development becomes a more important component of revitalization plans. Treasury guidance should note this distinction, guiding states to consider the variety of goals applicable in varying circumstances.

Identify Barriers to Revitalization

Any concerted plan should anticipate—and provide for means to overcome—barriers to success. Without an identification of barriers, tax credits and local effort are likely to be wasted. LIHTC developers are already required to fund a market assessment of their projects to determine that the need is sufficient and the project is feasible.²⁹ Identifying barriers to development in a community more broadly is an analogous task that should ensure that tax credits assist in revitalization, rather than in the furtherance of concentrating poverty. Similar “barrier identification” requirements exist in state QAPs. For example, the Texas 2016 QAP requires CCRPs to identify “problems in the revitalization area” such as “long-term disinvestment” and “declining quality of life.”³⁰ QAPs in other states should likewise favor CCRPs that identify barriers to housing and non-housing development.

Delineate Measures to be Taken and a Timeline for Implementing Those Measures

If any plan is going to be meaningful, it should involve concrete measures on a timeframe meaningful to revitalization. Both Georgia and Indiana’s QAPs require CCRPs to name “implementation measures along with specific, current, and ongoing time frames for the achievement of such policies and housing activities.”³¹ Indiana also does not consider “short term work plans” or outdated plans that “do not reflect the current neighborhood

²⁸ PENNSYLVANIA HOUSING FINANCE AGENCY, *supra* note 22 at pp. 6-7 (2015), www.phfa.org/forms/multifamily_program_notices/qap/2016_allocation_plan.pdf.

²⁹ 42 U.S.C. § 42(m)(1)(A) (“[T]he housing credit dollar amount... shall be zero unless ... a comprehensive market study of the housing needs of low-income individuals in the area to be served by the project is conducted before the credit allocation is made and at the developer’s expense by a disinterested party who is approved by such agency.”).

³⁰ TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, MULTIFAMILY HOUSING RENTAL PROGRAMS, *supra* note 16 at pp. 27-28.

³¹ STATE OF INDIANA, *supra* note 25 at p. 60 (2015); GEORGIA DEPARTMENT OF COMMUNITY AFFAIRS, *supra* note 19 at p. 14 (2015).

conditions,” as sufficient to meet the CCRP requirement.³² One relevant timeframe for planning is the length of the initial compliance period (15 years) plus the extended use period (30 years total).³³ Ideally, many revitalization measures will operate on a much quicker timeframe (on the order of a few years) so that LIHTC residents are able to appreciate the benefits of revitalization during the period of affordability. Some revitalization measures will be longer-term and longer-lasting. In either circumstance, the state credit agency is best prepared to evaluate the relevance of measures when they are described on a particular time period.

Engage Community Partners and Individuals in Revitalization and Planning

To adequately reflect and respond to local needs, revitalization planning should engage community partners and individuals. At a bare minimum, CCRPs should indicate which private and public actors will carry out revitalization and which partners have committed resources to the development and implementation of the plan. Further, no CCRP should be developed solely or primarily by a LIHTC developer, as such a plan would lack critical insight on other dimensions of revitalization planned by other parties. As a best practice, we encourage the Treasury to guide state housing credit agencies to require a public hearing for each CCRP. Similarly in Georgia, CCRPs must document “[d]etails regarding community input and public hearings held prior to the adoption of the plan AND two (2) letters from any combination of non-profit organizations, neighborhood organizations, a development authority, or a local business coalition (e.g. Chamber of Commerce) actively working or investing in the area...”³⁴ These processes ensure that revitalization will proceed in a coordinated way that is responsive to residents’ needs, rather than being interrupted by local opposition or ultimately diserving the local residents.

Conclusion

Currently, there are vast differences between state interpretations of “concerted community revitalization plan.” In many cases, these interpretations exacerbate concentrations of poverty. For example, some states place LIHTC projects in qualified census tracts without CCRPs, perpetuating income- and race-based segregation.

By defining clear minimum threshold criteria for a CCRP, the Treasury can further the purpose of the statute and limit instances in which LIHTC projects exacerbate concentrations of poverty.

We therefore encourage the Treasury to adopt the ten proposed minimum threshold criteria: CCRPs should include planned development and committed resources, both from public and private sources; define a specific geographic area and the demographics of the community within the area; include non-housing development necessary for communities to be revitalized; refer to existing state and federal programs; select goals; identify barriers; enumerate measures and timelines; and appoint public and private actors to implement those measures. By setting these

³² STATE OF INDIANA, *supra* note 25 at p. 60 (2015).

³³ 26 U.S.C. §§42(h)(6)(D), (i)(1).

³⁴ GEORGIA DEPARTMENT OF COMMUNITY AFFAIRS, *supra* note 21 at p. 15 (2015).

criteria, the Treasury can provide clarity and consistency in LIHTC, while administering the program in a manner required by 26 U.S.C. § 42(m)(1)(B)(iii).

Respectfully submitted,

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