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NYS Homes and Community Renewal
Fair and Equitable Housing Office
25 Beaver Street
New York, NY 10004

To Whom It May Concern:

I am writing on behalf of New York State Fair Housing Network regarding the two qualified allocation plans (QAPs) developed by the Division of Homes and Community Renewal (HCR) and how the QAPs could be revised to better disperse affordable developments through high-opportunity, low-poverty communities.

We are composed of six regional fair housing groups: CNY Fair Housing, Fair Housing Justice Center, Inc., Housing Opportunities Made Equal, Inc., Legal Assistance of Western New York, Long Island Housing Services, Inc., and Westchester Residential Opportunities, Inc. We are dedicated to addressing housing inequities and enforcing local, state, and federal fair housing laws. As a collective, we represent 85% of the population in the State of New York.

As you know, New York State 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 the state, we believe its QAPs 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 New York State neighborhoods.¹ This pattern of siting most affordable housing in a limited number of high poverty, minority neighborhoods restricts the housing choices available to low-income households, increases poverty concentration, and perpetuates existing patterns of residential racial segregation.² It is critical, in our view, that HCR modify its QAPs to ensure that tax credits produce more affordable housing units for families in low-poverty neighborhoods that currently have few, if any subsidized or affordable

¹ While there are four existing QAPs in New York State, one (by the New York City Department of Housing Preservation and Development) focuses exclusively on New York City, and the other (by the Development Authority of North Country) focuses on rural areas of the state.

² 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>

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

Additionally, we note that HCR has not updated its QAPs consistently or annually as law mandates.³ An update and improvement of the QAPs is accordingly ripe.

First and foremost, the HCR and HFA QAPs should explicitly state a commitment to affirmatively furthering fair housing. Neither QAP does not address fair housing nor does it reaffirm HCR'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 HCR's commitment to fair housing. The State of Massachusetts includes such language in its 2016 QAP. In this manner, HCR translates the commitment to fair housing into practice, as well as ensures that housing units provide all expanded choices and benefits to future tenants.

Second, we specifically recommend the following changes to the QAPs to reduce residential segregation throughout NYS, expand housing choice, and foster the creation of more open, accessible, and inclusive neighborhoods:

- As a threshold requirement, New York's QAPs should not make allocations to projects that will increase levels of racial or economic concentration. At a very minimum, the HCR QAP should consider adopting HFA's language on the siting of low income units. Both QAPs should make racial and economic integration a separate category and allocate a substantial amount of points to projects that meet that criteria.
- Regarding both HCR and HFA QAPs, HCR 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.
- HCR should offer points to incentivize the development of mixed-income family housing. More points should be allocated to projects reaching very low-income occupants (lower than 50% AMI), as well as providing market-rate units, to ensure that HCR is promoting racial and economic integration.
- HCR and HFA QAPs should consider making mass transit accessibility a threshold requirement for a project.
- HCR should separate high-income areas and development siting near high performing schools as distinct categories from high-opportunity
- As a threshold requirement, HCR and HFA should not make allocations to projects in distressed neighborhoods unless they have a concerted community revitalization plan (CCRP).
- The HCR and HFA QAPs should make a reference 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, both QAPs 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

³ HCR's current QAP was published in 2015, while HFA's current QAP was published in 2010.

meet on CCRPs. This definition should 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.

- HCR should remove provisions for local approval or support be removed from its QAPs, as they tend to penalize projects sited in high-opportunity areas with more active and vocal “not in my backyard” community opposition. In lieu of existing language, the QAPs should adopt language like the New Jersey QAP, which simply provides an opportunity for “municipal comment.”
- It is important that LIHTC projects target the most in-need populations, including low-income persons with disabilities. That includes requiring proper accessibility accommodations. New York's QAPs all include some scoring incentive for units targeted to persons with disabilities. The QAPs should be modified to include a threshold requirement that each LIHTC project meet a minimum percentage of accessible and adapted units, and units for persons with special needs, all integrated within the larger project. In addition, the other QAP should emulate HCR's QAP in its incentives for disability-accessible units

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

- We suggest HCR conduct on-site inspections of newly constructed LIHTC housing developments to ensure compliance with state and federal accessibility requirements. Failure by developers to comply should result in limiting the developer's participating in future LIHTC programs.
- We suggest collecting extensive LIHTC occupancy data to evaluate whether housing is being provided on a nondiscriminatory basis and whether LIHTC programs are affirmatively furthering fair housing. Key demographics to include are race, national origin, number of households using rental subsidies, 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 housing siting⁴, Texas changed its scoring criteria in 2013 to reduce racial segregation of tax credit developments and improve housing choice in low-poverty neighborhoods.⁵ 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 race-neutral approach and its subsequent impact: “From 2006 to 2012, 68 percent of LIHTC awards went toward the production of

⁴ *Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc.*

⁵ 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.

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.]⁶

We encourage you to think creatively to address how your existing QAPs may operate to exacerbate segregation and discourage opportunity for our most vulnerable populations. We thank you for opportunity to meet with HCR staff responsible for the operation of the LIHTC program so that we can more fully discuss the concerns and suggestions that are described in this letter.

Thank you very much for your consideration.

Sincerely,

New York State Fair Housing Network

⁶ 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.