

PRRAC

Poverty & Race Research Action Council

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August 11, 2017

Jennifer Schwartz
Assistant Director for Tax Policy and Advocacy
National Council of State Housing Agencies
444 North Capitol Street NW, Suite 438
Washington, DC 20001

Re: *NCHSA Recommended Practices in Housing Credit Administration*

Dear Ms. Schwartz,

Thank you for the opportunity to review the draft NCSHA “Recommended Practices in Housing Credit Administration” circulated for comment last month. As you know, we have been concerned about the wide variation in civil rights compliance in the LIHTC program among state housing finance agencies (HFAs) for many years, and we are pleased to see NCSHA taking a leadership role on these issues. In this letter, we will respond to four specific areas of the Recommended Practices, and make some additional recommendations for your consideration.¹

3. Concerted Community Revitalization Plans

We agree with your recommendation that the precise contours of the Concerted Community Revitalization Plan (CCRP) provision should be determined by each state, with a set of baseline factors to be used as a foundation for each state’s definition. We note that the factors you set out in the draft generally track the current pending LIHTC bill in Congress,² which we support, but we think that this section of your draft could be further strengthened, since it is part of a “recommended practices” guide, which by definition should extend beyond the minimum federal requirement. We have set out our detailed recommendations on the CCRP in a recent report,³ and based on our conclusions in that report, we think your draft could be strengthened in the following ways:

- > Your recommendation that the CCRP include a “clear direction for implementation” (tracking similar language in the pending bill in Congress) is an important reference to the need for an actual “plan,” but we would urge you to go further and stress to state HFAs that the Concerted Community Revitalization

¹ We are providing these comments in good faith as part of an ongoing policy dialogue with NCSHA, with the goal of improving state civil rights performance in the LIHTC program. As you know, we believe that the Fair Housing Act requires significantly more leadership from the federal government than we have seen in the past. In the absence of such leadership, we are hopeful that your efforts, and the efforts of HFA leaders and civil rights advocates across the country, will move the LIHTC program in a positive direction.

² Affordable Housing Credit Improvement Act of 2017.

³ *Assessment Criteria for “Concerted Community Revitalization Plans”: A Recommended Framework* (PRRAC, March 2017) available at www.prrac.org/pdf/PRRAC_CCRP_recommendations_3_14_17.pdf.

Plan should contain basic elements of any planning document, including setting “goals for outcomes” (language in the pending bill), identifying barriers to implementation, setting specific timelines and benchmarks, and identifying key community partners to engage in the planning process.

> The “strategy for obtaining commitments of public and private investment in non-housing infrastructure, amenities, or services beyond the Credit development” is a valuable provision that is consistent with the recent Treasury Department Notice, but omits the temporal qualification of that Notice (which you note in your discussion), that “the statutory preference fails to apply unless, not later than the date of the Housing Credit Allocation, a plan exists that contains more components than the development itself.”⁴ By putting a deadline on the commitment of non-housing resources, this part of your recommendation would have more power in helping states identify and secure actual financial resources to invest in the local neighborhood as part of their CCRP.

4. Local Approval and Support of Developments

We agree with your recommendations in this section, and we are hopeful that the prohibition on local approval and contribution requirements or incentives is also incorporated in the final LIHTC reform statute in the current Congress.

9. Development in High Opportunity Areas

We support NCSHA’s recommendation for incentives for development in low poverty, less segregated “high opportunity” communities, and we would suggest several ways to strengthen this section:

- > Since this is a recommended practices guide, we urge you to include the practice being adopted by some state HFAs, using set-asides or a portion of annual allocations in high opportunity areas,⁵ as an alternative to point systems that are often skewed toward traditional LIHTC developments, even when “opportunity” points are included in the QAP.
- > The high opportunity definition should also include low poverty rates (<10%), as discussed in the social science research that you cite.
- > In your recommendation on the balance of different types of developments in different areas, it would be very helpful to specifically mention the importance of developing *new housing for families with children* in high opportunity areas, consistent with the research evidence you cite.
- > In your discussion of the importance of “balance” between investment in high opportunity and distressed neighborhoods, it would be very helpful if you could clarify that your recommendations require state HFAs to look at the cumulative concentration of LIHTC developments in high poverty segregated neighborhoods vs. low poverty neighborhoods, rather than looking at the “balance” in a particular

⁴ IRS Notice 2016-77, <https://www.irs.gov/pub/irs-drop/n-16-77.pdf>.

⁵ See *Building Opportunity II: A Fair Housing Assessment of State Low Income Housing Tax Credit plans* (PRRAC, May 2015), available at www.prrac.org/pdf/BuildingOpportunityII.pdf.

QAP year. In some states, the thirty-year legacy of LIHTC siting, in combination with prior siting of public housing and other publicly assisted housing, would require a more realistic analysis of “balance.”

39. Encouraging Fair Housing Compliance

This section should be expanded to include affirmative marketing plans and to address two pressing issues of non-compliance by many state HFAs:

- > Fair housing compliance should include a recommendations that states incorporate affirmative marketing plans for all developments.⁶ This is already standard practice in a number of states, but it would be valuable to also include as a best practice in this NCHSA guide.
- > In states without state source of income discrimination laws, it is incumbent on the state HFA to establish its own system of responding to complaints, investigating, and enforcing compliance with the statutory prohibition of discrimination against Housing Choice Voucher families.⁷
- > NCHSA should provide guidance to state HFAs on best practices for comprehensive demographic reporting on tenants in each LIHTC development, as required by Congress in 2008.⁸ Recent HUD reports on state compliance have noted wide variation in quality and completeness of data across states.⁹ This is an important missing element of the NCSHA Recommended Practices guide.

Thank you for the opportunity to comment on the Recommended Practices guide, and we look forward to continuing dialogue with NCSHA on these issues.

Sincerely,



Philip Tegeler, Executive Director
Megan Haberle, Director of Housing Policy

cc: National Fair Housing Alliance
Lawyers Committee for Civil Rights Under Law
NAACP Legal Defense Fund
ACLU Racial Justice Program

⁶ See Megan Haberle et al, *Accessing Opportunity: Recommendations for Marketing and Tenant Selection in LIHTC and Other Housing Programs* (PRRAC, December 2012), available at www.prrac.org/pdf/affirmativemarketing.pdf.

⁷ 26 U.S.C. § 42(h)(6)(B)(iv).

⁸ Housing and Economic Recovery Act of 2008 (HERA), H.R. 3221, Section 2835(d).

⁹ See *Understanding Whom the LIHTC Program Serves: Data on Tenants in LIHTC Units as of December 31, 2014* (HUD, April 2017), available at www.huduser.gov/portal/sites/default/files/pdf/LIHTC-TenantReport-2014.pdf.