



September 13, 2010

Patricia Rynn Sylvester, Director  
Multifamily Housing Community Development Administration  
Maryland Department of Housing and Community Development  
100 Community Place  
Crownsville, Maryland 21032-2003

Re: Comments on Draft 2011 Qualified Allocation Plan and Multifamily Financing Guide

Dear Ms. Sylvester:

I write on behalf of the Baltimore Regional Housing Campaign (BRHC) to submit comments on the state's draft 2011 Qualified Allocation Plan (QAP) and the Multifamily Financing Guide. The BRHC is a coalition of civil rights and affordable housing organizations in the Baltimore region working for regional equity. The BRHC envisions a Baltimore region where public policies and private investments are aligned to overcome historic divisions by race and class, and where all families have the right and the means to live in high opportunity communities with excellent schools, economic prosperity, and low rates of poverty.

The BRHC is submitting the following suggestions to support the QAP's compliance with the Fair Housing Act and to ensure Maryland citizens and developers have access to housing development funding provided by the federal government.

**Local Government Support and Contribution Threshold (Section 3.3 Multifamily Financing Guide)**

At the outset, we wish to express our deep concern that Maryland proposes to continue to apply the *Local Government Support and Contribution* threshold requirement in Section 3.3 of the Multifamily Financing Guide to the allocation of federal Low Income Tax Credits. We ask that this requirement be eliminated from the QAP because it (1) is inconsistent with the local-involvement standard set out in the Internal Revenue Code for the LIHTC program, (2) sets up an institutional mechanism for NIMBY opposition to LIHTC housing without regard to the worthiness of the project, (3) allows local governments a pocket veto over LIHTC allocations, (4) deters developers from even considering sites in communities resistant to affordable housing and, as a consequence, (5) imposes an impediment to fair housing that hinders Maryland from meeting its obligation under the Fair Housing Act to affirmatively further fair housing.

Maryland's Local Government Support and Contribution threshold requirement is one of the most effective exclusionary tools in the nation. A community hostile to affordable housing for low income families can block a development by pressuring the local government to simply withhold one of the three required elements needed to surpass the threshold. No matter how worthy the project may be, the project will not proceed to be ranked and rated in accordance with the QAP's selection criteria. The local government does not even need to articulate a justification for withholding approval. In certain counties, the local government may not even consider the project on its merits unless the county councilperson or delegate for the area first approves it.

The BRHC convened a meeting of the leading non-profit and for-profit developers who regularly use DHCD's affordable housing programs to gain their perspective on the local approval/contribution requirement. We heard a general consensus that developers will tend to opt-out of developing family housing in neighborhoods and jurisdictions known for resistance to low income housing. Because of the costs associated with locating appropriate sites and obtaining site control, developers will instead concentrate their efforts on developing elderly housing, or developing in locations known to accept low income housing. This results in a dual phenomenon: LIHTC family developments largely restricted to low-income and/or minority neighborhoods and creating disparities between family developments and elderly developments.

When we met with Secretary Ray Skinner in May 2010, we asked that the state acknowledge and identify that its local approval/contribution requirement is an impediment to fair housing, and that the Department act administratively to eliminate the requirement from the state's administration of the federal Low Income Housing Tax Credit program. Neither state law nor regulation mandates the extension of the state's local approval threshold to federal programs. Its elimination from the QAP is long overdue.

### **Definition of "Elderly" Housing**

The Department proposes to lower the age defined as "elderly" from 62 years of age to 55. Federal housing programs have long used the age of 62 and above as the definition of elderly. Maryland should continue to use age 62 to define elderly housing.

The purpose of the proposed change is not given, but it will clearly have the effect of artificially increasing the market pool of persons qualifying for elderly housing. This will allow developers to present market studies showing a sufficient demand for additional elderly housing in market areas where such projects already exist. Additional elderly developments proposals would compete with family development proposals and reduce the incentive to create family developments.

Maryland has long had a substantial imbalance in its LIHTC program, producing many more elderly housing projects than family developments. In large part, this imbalance and the lack of family housing developments is due to the local approval requirement and discrimination against families with children, especially minority families with children. It

is easier for developers to gain approval for elderly housing in areas where family housing will not gain local approval. It would be very counterproductive for the state to further facilitate or incentivize developers to produce more elderly-only housing. To the contrary, many submarkets already have a saturation of elderly housing built through various housing programs. The state should instead focus on increasing the production of family and general occupancy housing, including three bedroom units for families with children.

### **Incentives for Family LIHTC Development in High Opportunity Areas**

The Baltimore region faces serious challenges caused by concentrated poverty in many Baltimore City neighborhoods, and now in portions of the older suburbs as well. As a result of government housing policies at the federal, state and local levels, family LIHTC developments are traditionally located in these high poverty or fragile neighborhoods, often the same neighborhoods that already have other forms of assisted housing. If we hope to change this pattern, the QAP must provide stronger incentives to 'level the playing field' and make it easier for developers to produce affordable housing for families in areas with access to good schools and family-supporting jobs.

The QAP makes a good start by awarding five (5) points for projects in communities with 'above average' indicators of opportunity. (Section 4.3.2, Multifamily Financing Guide). We applaud this approach, but an award of five points (out of a total of 305) is not sufficient to overcome other disincentives in the QAP. We urge DHCD to increase the number of points awarded for projects in areas with above average indicators from five to ten points (the same number of points total awarded for rural projects) and to allow a project to receive cumulative points for location in both a BRAC jurisdiction and an area with above average indicators.

In addition, DHCD now has the authority to provide a 30% basis boost to make certain difficult-to-develop projects feasible. DHCD should use that authority to encourage family projects in areas with above average opportunity indicators. (Section 3.7.3.4). Projects in high poverty areas designated as "Qualified Census Tracts" (QCT's) already receive a 30% basis boost. To level the playing field and account for the higher costs and greater difficulty of developing in high opportunity areas, the Department can and should target a 30% basis boost to projects located in areas with above average indicators.

DHCD should also use this discretionary authority to reduce the glut of single-family properties that are depressing the housing market and to incentivize their acquisition and reuse as affordable rentals. Single family properties provide a seamless way to better integrate low income families into areas with high performing schools, while also meeting the need for three bedroom and larger 'family-friendly' units that is not currently being addressed by the LIHTC program. However, single-family acquisition projects typically generate less eligible tax credit basis, and are more costly to manage than apartment units. By providing a 30% basis boost, single-family acquisition and rehab projects would be more feasible, and excess inventory would be removed from the struggling sales market.

## Projects that commit to serve applicants from PHA waiting lists

It appears that the Department is proposing to eliminate the five points previously awarded to projects that commit to serve applicants from PHA waiting lists. We strongly urge the Department to retain these points, and indeed, to step up monitoring and enforcement of this commitment. The inventory of public housing units in Baltimore, and now Annapolis, is shrinking dramatically, leaving thousands of families to languish on PHA waiting lists. This is precisely the wrong time to eliminate this incentive for affordable housing developers to serve families and individuals on PHA waiting lists. Moreover, because PHA waiting lists are disproportionately comprised of racial and ethnic minorities, disabled persons, and female heads of households, the impact of this change will fall most heavily on persons protected by the Fair Housing Act.

In addition to retaining the points for project sponsors that pledge to serve families on PHA waiting lists, we urge the state to require LIHTC developers to provide more robust, affirmative marketing plans for outreach to these households, as well as periodic monitoring and reporting of outcomes. The state should ensure that project managers have actually put in place effective intake mechanisms and that eligible families are fully informed of all LIHTC housing opportunities. As part of its efforts to affirmatively further fair housing, the state should require developers to conduct outreach to all PHAs operating within a metropolitan housing market area, and not just certain PHAs. DHCD could assist in this regard by setting up a standard format and 'one-stop' central application process whereby families could learn of all LIHTC housing opportunities and submit a single application on-line (or in hard copy) to any or all of the LIHTC developments appropriate for their family composition.

Thank you for the opportunity to present these comments. We are concerned that the current QAP is out of compliance with the Department's federal obligation to affirmatively further fair housing, and we urge you to bring the QAP in to compliance as soon as possible to preserve Maryland's ability to access these important housing development funds.

Sincerely,



Mel Freeman  
Executive Director, CPHA,  
for the Baltimore Regional Housing Campaign

### Baltimore Regional Housing Campaign Member Organizations

Citizens Planning and Housing Association  
Greater Baltimore Urban League  
BRIDGE  
Innovative Housing Institute

Metropolitan Baltimore Quadel  
American Civil Liberties Union of  
Maryland  
Poverty & Race Research Action Council