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Catherine Racer
Associate Director, Division of Housing Development)
Department of Housing and Community Development
Low Income Housing Tax Credit Program
100 Cambridge Street, 3rd Floor
Boston, MA 02114

Re: **Comments and Proposals from the Massachusetts Law Reform Institute on fair housing aspects of the FY 2022-23 Draft Qualified Action Plan**

Dear Ms. Racer:

The Massachusetts Law Reform Institute (MLRI) appreciates the opportunity to submit these comments and proposals on the Draft FY 2022-23 Qualified Allocation Plan for the Low-Income Housing Tax Credit (LIHTC) Program.[1]

These observations focus on QAP provisions relevant to the Department's obligation and efforts to affirmatively further fair housing and to leverage LIHTC resources towards the goal of dismantling segregation in Massachusetts. We urge DHCD to emulate what several other states have done and what is required to further fair housing goals—evaluate and publicly report on the outcomes of LIHTC policies in order to strengthen the program's efforts to address the harsh patterns of segregation and inequality in our state.

But first we want to express our appreciation for several provisions of the draft QAP and other DHCD policies, including the new requirement that sponsor/owners seeking LIHTC and/or subsidy funds from the Department must participate in Housing Navigator. Navigator will enable applicants from all communities to locate possible housing opportunities in low poverty areas or "opportunity communities" which is a key component of the Department's goals for the program. We also welcome various QAP provisions requiring reporting and studies that bear on fair housing aspects of the program (e.g., reports on concerted community revitalization, residency preference evaluation and data collection.) and we look forward to reviewing those reports and studies.

There is, of course, more work to do to harness the tax credit program to better address the extreme level of segregation in our state. To further that work, we once more urge the

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[1] Founded in 1968, the Mass. Law Reform Institute (MLRI) is a nationally recognized nonprofit poverty law and policy center. Its mission is to provide statewide advocacy and leadership in advancing laws, policies, and practices that secure economic, racial, and social justice for low-income people and vulnerable communities. MLRI specializes in large-scale legal initiatives and systemic reforms that address the root causes of poverty, remove barriers to opportunity, and create a path to economic stability and mobility.

Department to evaluate and publicly report on the *results* of various promising QAP policies relevant to fair housing so that the Department and stakeholders can determine how they might be adjusted to better further civil rights outcomes.

I. QAP POLICIES MUST BE INFORMED BY THE PERSISTENT AND EXTREME RESIDENTIAL SEGREGATION BY RACE AND INCOME IN MASSACHUSETTS.

In formulating the QAP DHCD must keep front and center its obligation to affirmatively further fair housing which means :

> . . . taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially or ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. . . [2]

Because the Department "must, at a minimum, ensure that [it makes] decisions informed by preexisting racial and socioeconomic residential segregation" these comments will briefly outline the racial and opportunity segregation in Massachusetts. Even a cursory look will help us better understand to what extent the Department's LIHTC policies and this QAP work toward "replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially or ethnically concentrated areas of poverty into areas of opportunity."[3]

A. Racial segregation in Massachusetts metro areas remains unconscionably high.
Four metro areas with a large share of the state's population have "high segregation"—Boston-Cambridge, Springfield, Fall River.[4] While we await what comes out of the 2020 Census, there is some early information showing that metro Boston is the 11th most segregated metro among the 50 metro areas with largest black populations and the Cambridge-Newton-Framingham metro is the 7th most segregated.[5]

A report from the 2017 American Community Survey shows almost no progress or even more pronounced segregation. Among the 68 metro areas with at least 100,000 Blacks or Hispanics: Massachusetts is near the top in segregation. The Boston metro area is the 14th most segregated for Blacks; Springfield remains the most segregated metro area for Hispanics in the country, Providence/Fall River is #4, Boston is #6 and Worcester #18.[6]

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[2] HUD AFFH regulation
[3] HUD AFFH regulation
[4] https://belonging.berkeley.edu/most-least-segregated-metro-regions.
[5] https://s4.ad.brown.edu/Projects/Diversity/Data/Report/report08122021.pdf
[6] https://www.governing.com/gov-data/education-data/residential-racial-segregation-metro-areas.html

B. Massachusetts has one of the highest rates of race-based "opportunity segregation" in the country.

The Department's Affirmative Fair Housing Policy and the 2019 Analysis of Impediments to Fair Housing recognize the persistent and extreme level of residential segregation in the state and urge DHCD to leverage all programs to meet the challenge. In this draft and previous QAPs DHCD has developed policies to implement the commitments articulated in the agency's fair housing plans and in these comments, we suggest how to build further on those commitments.

We especially hope that DHCD continues to shape the QAP to provide affordable rental housing in areas of higher opportunity to low-income families, especially those with young children and to evaluate how well the policies accomplish the stated fair housing goals. It is especially important to understand if households from higher poverty areas are living in the opportunity area projects. Recent research demonstrates that growing up in poor neighborhoods often negatively affects children's cognitive and psychological development and may limit their life opportunities and those of their children and grandchildren. COVID-19 has brought this home dramatically. See for example, the Boston Foundation report on the impact of living in segregated communities during the pandemic.[7]

It is beyond dispute that the life chances of young children from poor areas are greatly improved when their families move to lower poverty neighborhoods.[8] HUD has emphasized, the importance of growing up, from a young age, in a place with good schools, low crime rates, healthy air and more helpful attributes cannot be underestimated.[9] The data shows the work that lies ahead:

- About ninety percent of Latino and African American households in the state live in very low or low-opportunity communities compared to 31 percent of whites.[10]

- Metro Boston has the highest share of Hispanic children in very low-opportunity neighborhoods. Worcester is 3rd, Providence-Fall River is tied for 5th and Springfield is 8th.[11]

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[7] TBF: Racial Equity in the Time of COVID

[8] For a summary of research on effects of poor neighborhoods on children and families (before the release of Raj Chetty's work mentioned below) see Barbara Sard and Douglas Rice**,** *Creating Opportunity for Children, How Housing Location Can Make a Difference* (2014). Center on Budget and Policy Priorities. How Housing Location Can Make a Difference. **"**High-poverty neighborhoods, which are often violent, stressful, and environmentally hazardous, can impair children's cognitive development, school performance, mental health, and long-term physical health. These effects occur both directly and indirectly by affecting, for example, parents' mental health and parenting practices."

[9] Groundbreaking research by Raj Chetty finds that family moves to high-opportunity, low-poverty communities have profound long-term effects on children, particularly those under age 13. Many years later, these children earn 30% more as adults, are more likely to have attended college and have more stable financial and personal lives than peers who grew up in high poverty communities." . Groundbreaking Studies: Good Neighborhoods Help Low-Income Children Succeed.

[10] diversitydata.org - Child Opportunity Index

[11] https://www.diversitydatakids.org/sites/default/files/file/ddk_the-geography-of-child-opportunity_2020v2_0.pdf

- Massachusetts also ranks high among the 100 top metro areas for the share of Hispanics and Blacks who live in high poverty neighborhoods:

- In 2019 *Statewide: 2.8% of White residents lived in high poverty neighborhoods compared to 16% of Latinos and 11% of Blacks;*
  - In the New Bedford -Fall River area, 3.5% of Whites live in high poverty neighborhoods compared to 27% of Latinos and 20% of Blacks;
  - In Springfield, 6.3% of whites compared to 35% of Latinos and 25% of Blacks live in high poverty areas.
  - Other metro areas show similar neighborhood divergence by race/ethnicity.[12]

As a recent Boston Foundation report notes about life chances for people in poor segregated places: "The more segregated places tend to have higher opportunity gaps between racial groups. . . . Indeed, a recent Urban Institute study found that "metropolitan areas with higher levels of segregation also have wider racial and ethnic disparities in labor market engagement, high-performing schools, and toxin-free environments."[13]

As the QAP stresses, the locations of LIHTC units matters for AFFH and opportunity purposes. One HUD study shows how changes in the QAPs of several states from 2002-2013 correlate with location. It is heartening that Massachusetts comes out well compared to most other states after insertion of several fair housing policies in the QAP and we can do even better if we continue to evaluate the results of these policies as proposed in these comments .[14]

C. DHCD should evaluate to what extent the tax credit program has affirmatively furthered fair housing in Massachusetts.

A report from the Center on Budget and Policy Priorities reveals some troubling answers to critical fair housing questions about the results of our tax credit program—*tax credit units in Massachusetts are located disproportionately in higher poverty, racially concentrated areas compared to the share of all rental units located in those neighborhoods.*[15]

- 16% of Massachusetts tax credit units are in low poverty neighborhoods with less than 10% poverty (compared to 37.4% of all rental units). The good news is that the share of tax credit units in low poverty areas placed in service in the last five years is 21%.
- Conversely, 41% of tax credit units are in high poverty neighborhoods with more than 30% poverty (compared to 15% of all rental units). Again, the good news is that in the last five years, that share has been reduced to 34%. It would be important to understand how that came about and to what extent it is the result of QAP policies.

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[12] https://nationalequityatlas.org/indicators/Neighborhood_poverty
[13] TBF 2019 Report
[14] Effect of QAP Incentives on location of LIHTC Properties.
[15] https://www.cbpp.org/research/housing/few-low-income-housing-tax-credit-units-are-in-low-poverty-neighborhoods-state-data and https://www.cbpp.org/research/housing/low-income-housing-tax-credit-could-do-more-to-expand-opportunity-for-poor-families

These outcomes may well have improved since this 2018 report and an annual report as proposed here would allow DHCD and the public to keep track of progress.

Further, a 2012 report reveals that Massachusetts families in tax credit developments units do not live close to higher performing schools.[16] Out of the 100 largest metro areas, the three in Massachusetts (Boston, Providence-Fall River and Springfield) rank among the *lowest* on proximity to higher performing schools for families in tax credit developments. A fair housing report as suggested in these comments would update this information on proximity of tax credit unit to higher performing schools. Hopefully these outcomes have also improved since 2012, but we won't know without some form of reporting on the issue.

Also, it would be critical to learn more about the effectiveness of the broad fair housing narratives required in Threshold 13 of the QAP that are meant to detail "how the project location and type, tenant selection plan, and other applicable policies and procedures will further the Department's Fair Housing Principles . . ." It is not clear how the Department will measure or evaluate this threshold requirement without clearer criteria or guidance.

Of course, Massachusetts' shameful history and current state of racial and economic separation will not be solved with a tax credit allocation. But each year, with each round of funding, the program should strive to break down barriers to more equitable housing opportunities and choices. Research demonstrates that well-located tax credit developments can expand opportunity for low-income families and individuals.[17]

II. PROPOSALS TO STRENGTHEN THE AFFIRMATIVELY FURTHERING FAIR HOUSING POLICIES AND OUTCOMES IN THE LIHTC PROGRAM.

1. **Include fair housing and affirmatively furthering fair housing in the overarching goals of the program that are central to the mission** (page 2 of QAP).

2. **Adopt an opportunity map to guide QAP policies.** Throughout the QAP areas of opportunity are stressed, as they should be, because they are a cornerstone of the AFFH obligation to allow folks from low-income areas to live in neighborhoods with certain advantages. Yet to determine the location of the areas, in the QAP DHCD merely instructs applicants to use publicly available data and allows discretion about how to define those areas. This is insufficient. To ensure that DHCD meets its affirmatively furthering fair housing obligations through its QAP, the agency must have an agreed-upon opportunity map of the state to evaluate compliance. To determine whether LIHTC units are being built in areas of opportunity, DHCD needs an agreement on how to define economic opportunity in

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[16] Ingrid Gould Ellen, Keren Mertens Horn, *Do Federally Assisted Households Have Access to High Performing Public Schools?* (2012). https://www.prrac.org/do-federally-assisted-households-have-access-to-high-performing-public-schools/.

[17] The Center on Budget and Policy Priorities have put forth several proposals that DHCD might consider and discuss with stakeholders including coordination between LIHTC and rental assistance programs such as Housing Choice Vouchers Low-Income Housing Tax Credit Could Do More to Expand Opportunity for Poor Families the state. For example, California defines opportunity areas and provides maps each year as part of its tax credit allocation committee (TCAC), which enables it to analyze distribution of affordable housing units by opportunity. Indeed, DHCD already uses opportunity mapping for its Supporting Neighborhood Opportunity Massachusetts (SNO Mass) Program and has defined opportunity areas in the state. By adopting this opportunity map as a way to evaluate progress of its AFFH obligation, DHCD could rigorously evaluate its own AFFH compliance by ensuring a minimum percentage of units each year are built in SNO Mass Areas.

3. **Improve transparency and availability of information about the tax credit program.** To gauge the program's progress in affirmatively further fair housing the Department must examine its policies and the results of those policies. Only when DHCD itself has a clear idea about the fair housing outcomes of allocations can it create a fair housing roadmap for future tax credit activities.

   As a first step, we urge DHCD to make the scoring process and results of that process publicly available on the Department's website**.** As far as we know, there is no readily accessible information about applications, scores, and details about the tax credit projects and their neighborhoods.[18] Without being able to review the applications and understand how they are evaluated under the QAP criteria it is difficult to evaluate how meaningful the scoring process is and how closely the results are connected to the scoring. As Texas, Ohio and other states have done, DHCD should post information about applications submitted and scored.

   And once more we urge the Department to publish a list of all tax credit projects with addresses and basic information such as whether the project is production or preservation, number of affordable units, bedroom sizes, whether project is family, elderly or specialized, amount of credit award, etc. Since it appears that our LIHTC units are disproportionately located in low income and often poor neighborhoods, keeping an annual running score would enable the Department and the public to know if the QAP policies are working as hoped in the QAP.

   This shouldn't be difficult. Other states have posted various levels of public information on the progress of their LIHTC programs including Alabama, Arizona, Arkansas, Colorado, Idaho, Iowa, Kansas, Kentucky, Mississippi, New Jersey, New Mexico, New York, Oklahoma, Pennsylvania, Virginia, West Virginia, and Wyoming.

4. **Issue an annual report on the outcomes of the tax credit program including its contribution to the state's fair housing goals.** The AFFH obligation means, at a minimum, that DHCD should review its policies and the results of those policies to assess how successfully the tax credit program is working to address the state's pattern of residential

[18] Although much of the information described here may be available in response to individual public records requests, that burdensome undertaking should not be necessary.

segregation. To do this, like several other states, DHCD should issue an annual public report on what the tax credit program has accomplished – cumulatively and in the reporting year.[19]

The report, including maps, could tell us, for example:

- The number and location of family, elder units and specialized units in the portfolio and the number added in the reporting year;
- How the selection of developments in the year of the report measured up against the stated policies in the QAP;
- A description (including poverty rates, race, and ethnicity) of the census tract in which all family developments in the portfolio, and those selected and developed in the reporting year, are located;
- A description (for projects after a certain number of years) of the whether the concerted community revitalization goals considered when awarding credits to high poverty or high minority neighborhoods were achieved;
- For projects receiving points as a catalyst for private investment, a description of the investment and its place in the fair housing analysis;
- A description of who lives in the tax credit units (by race, ethnicity, income, family size, disability and more);
- The effect, if any, of residency preferences used by tax credit developments;
- If the projects in what are determined to be opportunity areas are more racially integrated than the communities in which they are located;
- For developments located in Qualified Census Tracts, a description of those tracts (income, race, school quality, crime, etc.)

The QAP provides several promising fair housing policies. But to effectively further fair housing more concrete and measurable goals should be considered. The DHCD LIHTC website is currently inadequate for these purposes as it is meant almost exclusively for developers with little accessible or useful information for stakeholders and the public to understand how the program is working.[20] [21] We once more urge DHCD to provide accessible program information on the website.

4. Ensure that tax credit units in higher opportunity areas are broadly available to people from high poverty areas. Depending on what an annual outcomes study suggested above reveals, DHCD should address how to ensure that tax credit housing in higher opportunity areas is not occupied primarily by people from those communities and only to a small extent by households from high poverty neighborhoods including people of color.

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[19] See for example California and Colorado's annual reports: https://www.treasurer.ca.gov/ctcac/2018/annualreport/2018-annual-report.pdf and https://www.chfainfo.com/arh/lihtc/LIHC_Documents/2018COStateAHTC_YE_ReportLetter.pdf

[20] https://www.mass.gov/service-details/low-income-housing-tax-credit-lihtc.

[21] We understand that DHCD is required to gather and has submitted a certain amount of tenant data to HUD. http://www.huduser.gov/portal/publications/pdf/2012-LIHTC-Tenant-Data-Report-508.pdf**.** Thus, it shouldn't be difficult to make the data public on the Department's website. Again, we appreciate the upcoming requirement for data collection in this QAP and look forward to learning how DHCD will share those reports with the public.

To open tax credit housing in higher opportunity areas to a broader group, we suggest that in addition to careful analysis of the results of DHCD's residency preference policy, DHCD give more points or otherwise reward projects in low poverty areas that include an admission preference for applicants from high poverty areas.

5. **Adopt clear criteria to evaluate Concerted Community Revitalization Plans (CCRP)** The QAP correctly attempts to balance investments in opportunity areas and "distressed and at-risk neighborhoods where strategic housing investment has a strong likelihood of catalyzing private investment, improving housing quality, promoting occupancy for a range of household incomes, and supporting a broader concerted plan for community revitalization through investment in jobs, transportation, and education…" We applaud the QAP provision requiring a sponsor to consent to a written agreement with DHCD to evaluate on a regular basis the effects of the development on the surrounding neighborhood. These reports will include tenant income demographics as well as reports on other community revitalization investments in the limited geographic area, concentrating on the investments potentially generated in part or in whole by the presence of the tax credit project.

Just as we need to know who lives in the tax credit units in opportunity areas, we also need to understand how the units in distressed areas are part of an effective revitalization plan that improves the neighborhood and the lives of neighborhood residents. The criteria for what constitutes a CCRP could be clearer. To ensure that CCRPs live up to the sponsor's assurances, we recommend that DHCD refer to and adapt several recommendations in the *Assessment Criteria for Concerted Community Revitalization Plans: A Recommended Framework*, from the Poverty Race and Research Action Council (PRRAC). [22] The proposals in the PRRAC Assessment are organized "such that each component of the term 'Concerted Community Revitalization Plan,' has meaning and effect. Specifically, a state's evaluation framework should assess the extent to which:

- A Concerted plan will (a) identify any planned private or public development and (b) enumerate resources committed to revitalization;
- A Community plan will (a) set clear geographic boundaries and (b) describe the community itself, and;
- A Revitalization plan will (a) include housing and non-housing development and (b) coordinate with State and Federal standards;
- The Plan itself will (a) articulate meaningful and achievable goals; (b) identify barriers to revitalization; (c) delineate measures to be taken and a timeline for implementing those measures; and (d) engage community partners and individuals in revitalization planning."[23]

Utilizing objective criteria such as those recommended in this assessment will assist the Department to better ensure that the tax credit awards in QCTs enhance and improve high poverty neighborhoods as required both by the tax code and civil rights obligations. If our tax

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[22] http://www.prrac.org/pdf/PRRAC_CCRP_recommendations_3_14_17.pdf
[23] PRRAC CCRP Recommendations

credit housing goes to poor and segregated neighborhoods, we must make sure that the promised impact on those neighborhoods is accomplished.

6. Eliminate local support policies and substitute Section 42 statutory minimum notice requirement. The QAP continues to prefer projects with active support from local elected officials and neighbors (although only scored with 2 points and including fair housing criteria). The Internal Revenue Code neither forces nor encourages a state allocating agency to require local approval.[24] The applicable federal statute covering local involvement in the siting of tax credit properties, 26 U.S.C. § 42(m)(1)(A)(ii), requires only that the agency do no more than notify "the chief executive officer (or the equivalent) of the local jurisdiction within which the building is located of such project and provides such individual a reasonable opportunity to comment on the project. DHCD's scoring for local involvement is above and beyond the control localities already have and use over development through zoning and land use regulations. Because of the costs of seeking appropriate sites and acquiring site control pending submission and approval of a tax credit proposal, or because of their desire to maintain friendly relationships for other projects in those localities, developers may rarely seek to develop in areas where they anticipate community or local government opposition. In the context of many Massachusetts communities' longstanding opposition to affordable, racially integrated housing, we urge DHCD to implement the best practices that have been adopted by at least 11 other states and require only the statutory minimum notification.

7. Assess the disparate impact effects of local residency preferences as proposed in the QAP: As occupancy data becomes available for new and existing units, we anticipate that DHCD will review the racial composition of residents in tax credit properties in largely white communities. If those residents also are significantly white, DHCD should investigate to what extent the residency preference contributed to that outcome and take appropriate action to further limit the preference. The QAP provision requiring owners to report annually on some household characteristics will be very useful. We urge DHCD to make those reports and the local preference study described in the QAP publicly available and include them in the annual report as proposed above.

8. Consider a preference for applicants who provide resident hiring opportunities. Tax credit developments, like other publicly supported housing, can potentially create employment opportunities for residents of the development or the neighborhood. It is our understanding that the Pennsylvania Housing Finance Agency has such a hiring preference for local residents and DHCD should consider a similar policy, especially for developments in low-income neighborhoods.

9. **Add a requirement or preference for sponsors who adopt an eviction prevention plan** . The pandemic has reinforced the importance of policies that allow families and individuals to avoid displacement from their homes whenever possible. For example, to receive rental assistance payments, DHCD requires owners/managers of multifamily housing participating in the Subsidized Housing Emergency Rental Assistance program (SHERA) to sign a "non-eviction commitment" outlining steps to avoid eviction.[25]

[24] Revenue Ruling 2016-29

[25] SHERA Program Policies

Another example is the policy to avoid evictions developed by the Winn Companies for its multifamily assisted housing around the country.[26] Following up, Boston is now requiring developers to include an eviction prevention plan that's modeled on Winn Companies' in their requests for city financing. As the program director says: "They don't get any city money until we approve their eviction prevention plan," she says. "It's an easy way to inspire, if you will, the [property] owners. They know they're not going to get funded without having a really stellar eviction prevention plan." We urge DHCD to consider a policy along the same lines.

10. Require tenant selection policies on criminal background checks. Denial of affordable housing to applicants with criminal records is a civil rights and racial justice issue because the criminal justice system disproportionately harms people of color. Despite making up only 17% percent of the state population, Black and Latino Massachusetts residents represent 50% of incarcerated people. Housing is a critical component to successful reentry and HUD is especially concerned that admissions practices for applicants with criminal records should not disparately impact protected groups.[27]

To tackle this issue, in July 2021 the Louisiana Housing Corporation required tax credit properties to modify their tenant selection policies to follow HUD fair housing guidance on tenant screening of people with criminal records.[28] The LHC stresses that providing housing to returning citizens is a critical fair housing tool given the disproportionate number of Black and Brown people involved with justice system. We urge DHCD to review the Louisiana screening criteria and consider similar policies for the Massachusetts tax credit program.

11. Convene a fair housing advisory group or appoint a tax credit allocation committee to work with DHCD on a range of affirmatively furthering fair housing issues in the DHCD tax credit program.

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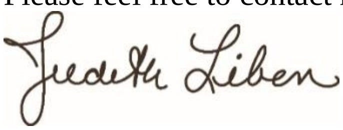
[26] https://shelterforce.org/2021/12/03/how-one-of-bostons-top-evictors-changed-its-ways/.
[27]https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF. In general see, https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2019/04/23/where-returning-citizens-find-housing-after-prison; https://housingmatters.urban.org/articles/can-housing-interventions-reduce-incarceration-and-recidivism
[28] See LA.Hsng Corp Criminal Records Screening Policy for LIHTC

III. CONCLUSION

We thank you and your team for your consistent and impressive work during these difficult times and for our state's strong tax credit program that creates and preserves quality affordable rentals. We hope you will consider these comments and proposals and provide responses as the Department does for the Moving to Work plan. Understanding your thoughts and insights on these fair housing issues would greatly assist us to adjust and improve our suggestions in coming years. As always, we hope to discuss and work with you on these issues.

Please feel free to contact me with any questions or thoughts.



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