

Legal Aid of North Carolina, Inc.

FAIR HOUSING PROJECT

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Ensuring fair housing throughout North Carolina

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VIA Email: rentalhelp@nchfa.com

NC Housing Finance Agency
Attn: Rental Investment
3508 Bush Street
Raleigh, NC 27609

Re: Draft 2017 QAP

Dear Sir/Madam:

We are writing on behalf of the Fair Housing Project of Legal Aid of North Carolina and the North Carolina Justice Center regarding the NC Housing Finance Agency's draft 2017 Qualified Allocation Plan (QAP) for the Low Income Housing Tax Credit (LIHTC) Program.

We are encouraged that the draft 2017 QAP contains a number of elements that are designed to ensure that the LIHTC Program in North Carolina not only results in the development of quality affordable housing in the state but also Affirmatively Furthers Fair Housing (AFFH). In particular, we believe that the amendments to the tiebreaker criteria (section IV.F.7) further the goal of encouraging projects in lower poverty and higher opportunity areas around the state. In addition, we support the additional points that may be earned based on having additional units at specified tenant rent levels (section IV.B.2) and the higher threshold for points under the Olmstead Settlement Initiative (section IV.F.5(a)).

However, we also believe that there are several areas where the draft 2017 QAP could be improved, and we urge the Housing Finance Agency to consider these comments as it finalizes the QAP.

Siting of Projects

We appreciate that the draft QAP retains the provision to prevent concentration of units in low-income and high-minority areas in Section VI.A.5. However, we believe that this provision could be improved by the adoption of several other provisions and clarifications:

1. Providing a clear definition of how the "Concentration" provision is implemented.

Specifically, the QAP states that concentration is measured by "comparing the percentage



of minority and low-income households in the site's census tract with the community overall." However, "community" is not defined and could refer to a neighborhood, city, county, or MSA. Moreover, the definition does not indicate whether the requirement is met simply by siting a project in a census tract with lower minority and low-income rates than the surrounding community or whether some other ratio is utilized. For example, if a "community" is 90% minority with a poverty rate of 60%, would a project sited in a census tract that is only 85% minority and with a poverty rate of 58% meet this criteria? The 2016 Massachusetts QAP (p. 39) provides greater specificity, offering points for siting family projects in "an area opportunity," which is defined as "a neighborhood or community with a relatively low concentration of poverty based on U.S. Department of HUD data." The MA QAP further specifies that to meet this requirement,

"a family housing project typically must be located in a census tract with a poverty rate below 15%. Projects located in municipalities with overall poverty rates below 15% may also qualify for points within this scoring category. On a case by case basis, at its sole discretion, the Department will permit certain projects to receive points in this category if the poverty rate in the census tract and/or the municipality is 15% or higher, as long as the project is located in an area with compelling attributes that make the location desirable to renters."

The Kirwan Institute for the Study of Race and Ethnicity has also developed criteria and methodologies to produce "Opportunity Mapping," which is intended "to illustrate where opportunity rich communities exist (and assess who has access to these communities) and to understand what needs to be remedied in opportunity poor communities."¹ The U.S. Department of Housing and Urban Development's Affirmatively Furthering Fair Housing rule, including the new Assessment Tools provided to recipients of HUD funding, likewise aims to help communities expand access to housing throughout a community so that individuals residing in affordable housing not face barriers to opportunity. Explicit adoption of criteria similar to that of the Kirwan Institute or the MA HFA's in the NC QAP could help provide greater incentives to ensure new projects are built in a variety of areas and are not concentrated by race or income level.

2. Prohibiting siting projects on properties located in HUD-defined Racially Concentrated Areas of Poverty and Ethnically Concentrated Areas of Poverty (RCAPs/ECAPs), absent a robust community revitalization plan, would also further this goal.
3. Setting specific goals for a specific number or percentage of projects that will be constructed in high-opportunity/high-income areas. Enacting such numerical goals provide a means to determine whether the QAP's current concentration provision is sufficient to meet AFFH requirements. Additionally, it will help the NCHFA determine

¹ See <http://kirwaninstitute.osu.edu/researchandstrategicinitiatives/opportunity-communities/mapping/>

whether incentives in the QAP are effective and allow the NCHFA to adjust incentives in future years, if necessary.

4. We recognize that LIHTC projects can, if designed and sited appropriately, help address gentrification and displacement that is occurring in numerous communities throughout the state, both through preservation and rehabilitation of existing housing and in the construction of new housing. We therefore recommend that, where projects are not sited in low poverty/high opportunity areas, they be given additional points if they can show how they will address displacement and gentrification in their community.

Site Bonus Points

The draft 2017 QAP provides that up to 2 points may be awarded for the site(s) in a county deemed to be the most desirable investment and the most appropriate for housing in the county (section IV.A.1(iv)). However, no further criteria are given for how this determination will be made. We recommend that the HFA provide additional guidance to applicants regarding the criteria that will be used, including whether factors that are already accounted for in the scoring may be used.

Tenant Selection

The Listing of Major Revisions notes that there are changes in the form of documentation being requested in the Targeting Program section (section IV.F.4). While we do not have any objection to such a change to facilitate the administration of the program, we wish to emphasize that screening criteria requirements can help prevent discrimination. While it is customary for management companies and landlords to use tenant screening criteria to limit financial and other risk, many such practices could have a discriminatory impact on minority and disabled applicants. The use of credit scores and criminal background checks in an overly-broad manner without individualized assessment can have a disproportionate impact on households with family members who committed minor offenses or offenses unrelated to their tenancy or distant in time. The QAP should not allow automatic or overbroad exclusions in the tenant selection process. In addition, to ensure that a wide pool of tenants not only apply for but are considered for housing, we recommend that tenant selection procedures include the following requirements:

1. That applications be accepted by mail, electronically, or in person.
2. That a lottery be used to select applicants from among those who qualify, rather than using a first-come, first-serve process.
3. That applications not be denied based on rental history solely due to the fact that an applicant has had an eviction action filed against him/her absent some other evidence of conduct that indicates the applicant is not an acceptable candidate for tenancy.
4. That applicants with low credit scores be provided the opportunity to establish creditworthiness through other means (such as non-traditional credit reports).
5. That for projects located in high-opportunity/upper-income areas, a preference be given for Section 8/Housing Choice Voucher holders and people on PHA waiting lists in the region.

Miscellaneous

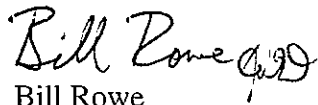
1. Clarify in the section on Management Experience (section IV.D.2) that at least one staff person in a supervisory capacity have training in fair housing law.
2. While the Project Team Disqualifications (section IV.D.3(b)) note that an owner, Principal, or managements agent with an adverse fair housing “settlement” may be disqualified, it does not include “judgments” and/or “administrative determinations” by HUD and state and locally equivalent agencies. We recommend the language be amended to state:
 - a. “within the past ten years has been in a bankruptcy, an adverse fair housing settlement, judgment, or administrative determination; an adverse civil rights settlement, judgment, or administrative determination; or an adverse federal, ~~or~~ state, or local government proceeding and settlement”
3. Consider requiring a Lease Addendum, to be signed by the tenant(s) and landlord(s), setting forth certain mandatory compliance requirements, including (1) that termination is only allowed for “good cause,” (2) that tenants are subject to protections of the Violence Against Women Act (VAWA) and the federal and state Fair Housing Acts; (3) that a non-disabled tenant in a unit with accessibility features s/he does not need agrees to relocate to a non-accessible comparable unit to accommodate a household needed the accessible unit; (4) that the landlord/management company will not discriminate against “Section 8” or other housing vouchers or certificates.²
4. Under Amenities, a bus/transit stop qualifies for 6 points if it meets certain criteria, including being on a fixed location and with a covered waiting area (section IV.A.1(b)(ii). Where all requirements are met except for the covered waiting area, only 2 points are available under this provision. While we support the requirement for a fixed location, we wish to note that many well-established transit systems in major metropolitan areas lack covered waiting areas at many of their stops, and this requirement could make it difficult for projects to receive the full 6 points under this criterion.
5. The draft QAP currently states that no county in the East, Central, and West Regions will be awarded more than one project under the new construction and rehabilitation set asides (section II.F.1(a)). However, this provision makes no distinction between larger and smaller projects, and it could create a disincentive for smaller projects that might be more appropriate for some rural counties. We recommend that the HFA consider other means to ensure geographic dispersal of projects, possibly capping the number of units per county or some other measure, rather than the number of projects.
6. Provide incentives, such as additional points, if a proposed development addresses an impediment or barrier in a local or state government’s Assessment of Fair Housing (formerly the “Analysis of Impediments to Fair Housing Choice”) study.
7. The draft QAP requires the project team to have successfully developed, operated, and maintained in compliance projects between 2010 and 2016 (section IV.D). While we

² The Pennsylvania HFA requires such an addendum for LIHTC property owners/managers.

understand the importance of funding applicants who are likely to succeed in their projects, this provision restricts competition for the program, potentially excluding otherwise qualified developers and potentially having a disparate impact on minority and women-owned businesses. The Massachusetts HFA's QAP, by contrast, provides additional points for state-certified minority and/or women's business enterprise members as on the development team. We recommend that the HFA consider other mechanisms that do not unnecessarily restrict competition to the program but that still ensure high quality and successful projects.

Thank you for your consideration of our suggestions. We would appreciate the opportunity to meet with the appropriate NCHFA staff to discuss our proposals in more detail.

Sincerely yours,



Bill Rowe
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