

Legal Aid of North Carolina, Inc.

FAIR HOUSING PROJECT

224 South Dawson Street • P.O. Box 26087 • Raleigh, NC 27611
1-855-797-FAIR(3247) Fax 919.861-1887
www.legalaidnc.org

Ensuring fair housing throughout North Carolina

George R. Hausen, Jr.
Executive Director

Jack Holtzman
Jeffrey Dillman
Project Co-Directors

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VIA Email: rentalhelp@nchfa.com

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

Re: Draft 2014 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 2014 Qualified Allocation Plan (QAP) for the Low Income Housing Tax Credit (LIHTC) Program.

The draft 2014 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 for the state but also Affirmatively Furthers Fair Housing (AFFH). However, we also believe that there are several areas where the draft 2014 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.
2. Creating incentives for new construction projects that comply with one of the following:



- a. Are built in high-opportunity/upper-income and non-minority areas and are open to people throughout the region, or
 - b. If built in high-poverty area and/or area of minority concentration, are mixed-income projects, with both market rate and subsidized units.
 - c. Are linked to transit-oriented development.
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 whether incentives in the QAP are effective and allow the NCHFA to adjust incentives in future years, if necessary.¹

Ensuring Adequate Housing for People with Disabilities

The draft QAP retains a number of important provisions to ensure that adequate housing is built that meets the needs of people with disabilities. To further these goals, we recommend that the QAP incorporate the following:

1. In order to determine the extent to which accessible units are assisting people with disabilities, we recommend that developers report, on an annual basis, the number of accessible units in their properties as well as whether the current residents have a disability that requires such features.
2. With regard to "Targeting Plans," we recommend adding provisions which require
 - a. That when an accessible unit becomes vacant, it be held vacant for up to 60 days to allow people with disabilities who need such feature(s) the opportunity to apply for the unit.
 - b. That before a vacant accessible unit is offered to a non-disabled applicant, the unit be offered first to a current resident with a disability who needs such feature(s) and second to a person on the waiting list with a disability who needs those feature(s).
 - c. The adoption of a requirement that leases contain a provision that, if an accessible unit is rented to a household that does not need that accessibility feature, the lease include a provision that the household agrees to move to another vacant non-accessible unit of the same size if a person with a disability on the waiting list needs such a feature.
 - d. That priority be given to people with disabilities, including people who are leaving an institution such as a hospital, adult care home, or nursing home.
3. While we recognize that the removal of the accessibility statement in Appendix B does not remove the requirement that project be built in compliance with Fair Housing Act, ADA, and other requirements, we recommend that the statement not be removed.

¹ Both the Pennsylvania and Massachusetts QAPs have such requirements.

Affirmative Marketing

To ensure that projects help reduce, rather than reinforce, patterns of segregation, we recommend that all applications be required to include an affirmative marketing plan designed to ensure that those least like to apply are made aware of the available housing. Such a requirement should include the following elements:

1. A description of the geographic market area that is regional, rather than just covering the neighborhood or city.
2. An analysis of those individuals in the market area who are least like to apply, as well as a description of how such individuals will be targeted in the marketing.
3. Identification of where and when applications will be distributed, with provisions made for on-line, mail, and in-person submission.
4. The time period of the marketing plan, which should begin at least 4-6 months prior to occupancy.

Tenant Selection

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 with regard to applicants who have a criminal history, the tenant selection decisions:
 - a. Not be based solely on previous arrest(s), as opposed to convictions.
 - b. Not be based solely on juvenile records.
 - c. Not be based on criminal activity that is a direct result of an applicant's disability or an act of domestic violence committed against the applicant.
 - d. Consider mitigating circumstances, if relevant, including (a) the length of time between the conviction and the application; (b) evidence of rehabilitation; (c) the seriousness of the offense.
6. 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.

Data Collection

To allow the NCHFA to determine whether its Concentration and other provisions are having the intended impact in affirmatively furthering fair housing, we recommend that the NCHFA require

that management of approved projects collect, maintain, and provide to the NCHFA the following data on both applicants and residents:

- a. Race of household;
- b. National origin of household;
- c. Use of Section 8/Housing Choice Voucher;
- d. Disability status (see discussion regarding People with Disabilities, above).

Miscellaneous

1. To ensure that local governments' exclusionary policies do not inhibit the development of LIHTC units in their jurisdiction, we recommend that where a project is delayed due to a local government's exclusionary zoning or other policies, the HFA allow the developer to carry-over (and the HFA re-issue) its credits to the next year.
2. Provide incentives, such as additional points, to projects designed to accommodate larger family sizes (i.e. with 3 or more bedrooms).
3. Include an "Affirmatively Furthering Fair Housing" goal statement for the LIHTC in the QAP. HUD's new proposed AFFH Regulation contemplates that states must develop an fair housing action plan detailing how they will "foster and maintain affordable housing (including the coordination of Low-Income Housing Tax Credits with the development of affordable housing)." Even without formal adoption of this regulation, the NC HFA should ensure that projects funded through the LIHTC Program further the state's fair housing goals.
4. Provide incentives, such as additional points, if a proposed development addresses an "impediment" in a local or state government's Analysis of Impediments to Fair Housing Choice study.

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
General Counsel
North Carolina Justice Center



Jeffrey Dillman
Co-Director, Fair Housing Project
Legal Aid of North Carolina