



Comments on 2022 NC Qualified Allocation Plan (QAP)

North Carolina Housing Finance Agency
Ms. Tara Hall, Director of Rental Investment
3508 Bush Street
Raleigh, NC 27609

Dear Ms. Hall,

Durham Congregations, Associations, and Neighborhoods (CAN) is a diverse, non-partisan community-organizing non-profit based in institutions across Durham. Our membership includes 28 congregations, associations, nonprofits, neighborhood organizations, and other community groups that share common interests in building collective power and resolving problems that impact low and moderate income people in Durham. Crossing the boundaries of economics, race, age, religion, gender, sexual orientation and geography that divide our communities, we build relationships of trust among people and institutions across Durham County by prioritizing listening and the centering of the needs of those most affected by issues. Durham faces a uniquely urgent need for affordable housing development as rental prices for one-bedroom and two-bedroom apartments rose 34% and 27%, respectively in 2020-- the second-highest of any city in the country. As an active champion for affordable housing deeply rooted in relationships with residents, Durham CAN offers the following comments on the QAP in the hope that NCHFA will center the needs of those most affected-- the residents-- in its creation of LIHTC policy.

PRESERVING AFFORDABILITY

Preserving the affordability of LIHTC units is essential not only to maximize the cost-efficiency of millions of dollars of taxpayer investment, but also to protect housing quality and choice for low-income renters across the state. In the interest of preventing LIHTC properties from exiting the affordability period early, we strongly support NCHFA's strict consequences for project teams who request qualified contracts and the policy's efficacy in mitigating that threat to loss of affordability. However, other impediments to long-term affordability still exist, such as denial of the Right of First Refusal (ROFR) and 30-year expirations. Increasingly today, outside capital is obtaining control of Housing Credit investor limited partnerships, and then refusing to recognize the purchase rights of nonprofits until they receive a payment of money in excess of the agreed upon price in the ROFR agreement. The taxing costs of ROFR disputes negatively impact non-profit partners and the residents they serve; disputes can result in deferred maintenance, reduction or elimination of social services for residents, and premature loss of affordability. Disputes monopolize the nonprofit's time and energy, which would otherwise be spent analyzing and meeting residents' needs and planning for future investments in affordable housing, and therefore decrease the cost-effectiveness of LIHTC awarded to the project. As an increasing number of parties involved in ROFR disputes invest in properties in NC, it is essential that NCHFA prevent these disputes from happening in order to protect LIHTC residents, non-profit partners, and taxpayer dollars.



In addition to denial of the ROFR, another way affordable housing is lost is through expiration of affordability requirements after 30 years. LIHTC began in 1987, and therefore the first projects placed in service have begun exiting the 30-year affordability period. And as more LIHTC properties are built, more are set to expire, and a tidal wave of expiring affordable units looms in the future. In order to preserve the investment made in affordable housing across the state, and to ensure every family in NC can afford a safe, healthy home, we ask that NCHFA:

- (1) **Offers additional points to projects that agree to extend affordability** beyond the typical 30-year extended use agreement. Offering additional points within the QAP process also has the added benefit of diversifying scoring and reducing reliance on tiebreakers in favor of standards for projects that prioritize the needs of residents.
- (2) **Increases the non-profit set-aside.** Mission-driven nonprofits are more likely to maintain affordability after a project has exited the affordability period. Increasing the number of nonprofits who are awarded Tax Credits would naturally preserve affordable housing without additional investment funds.
- (3) **Increases the rehabilitation set-aside.** Rehabilitation projects typically have lower costs than new construction projects, and thus are a more cost-effective way of preserving affordability when compared to new construction.
- (4) **Implement policies that protect the Right of First Refusal.** Recently, limited partners have started blocking the Right of First Refusal, a move that can cost nonprofit partners tens of thousands of dollars in court fees-- or in increased property sale prices-- that would otherwise go to resident services and property management. In order to close this loophole, the QAP should require nonprofit applicants to have a Letter of Intent (LOI) from a qualified equity provider that provides for a ROFR with listed features that protect the interests of the nonprofit holder that clearly grants a right of first refusal to purchase the project for a below-market purchase price, following the expiration of the tax credit compliance period, in accordance with Section 42(i)(7). The language in the LOI eventually must then be included in the partnership agreement.

Furthermore, NCHFA should exclude equity providers-- similarly to the current policy disqualifying project teams who request a qualified contract-- who refused to recognize a nonprofit ROFR, been involved in a lawsuit against a general partner challenging the exercise of a ROFR, or otherwise undermined long-term affordability of property. Both in the case of for-profit and nonprofit sponsored deals, NCHFA should require agency approval of the transfer of investor interests. Approval of transfer should be based on standards designed to discourage the transfer to entities that have a history of engaging in practices that extract resources out of affordable housing and promote transfer to entities who will continue to serve the lowest income tenants for the longest period of time. For existing partnership agreements that specifically require a third party to purchase a property to trigger



the ROFR, NCHFA could support the creation of a special entity endowed with the financial resources to make such offers, or fund an existing organization that has the capacity to do so.

Virginia Housing's (VHDA) QAP combines ROFR protections and expanded affordability-period opportunities into one policy; VHDA awards additional points in its QAP for projects with at least a 10% ownership interest by a local housing authority or qualified nonprofit who has a right of first refusal to purchase the project at the end of the 15-year compliance period for a price not to exceed the outstanding debt and exit taxes of the for-profit entity. Virginia's policy represents another way to increase the likelihood that projects will remain affordable after exiting the affordability period

RACIAL EQUITY AND JUSTICE

Black and Indigenous People of Color (BIPOC) disproportionately endure the consequences resulting from shortages of quality affordable housing, including but not limited to: cost-burden, overcrowding, homelessness, and exposure to toxins in the home. Across NC, 31% of households are cost burdened, but among Black/African Americans and Pacific Islanders, that statistic is 45%. This inequity is the legacy of decades of racialized disinvestment and segregation. LIHTC has the power to begin reversing that legacy. Other documents published by NCHFA, such as the *Analysis of Impediments to Fair Housing* and the *Housing Needs Assessment*, specifically name race as a factor in a family's ability to afford safe and healthy housing and outline goals to increase affordability and improve living standards for BIPOC. The QAP should similarly reflect specific goals to advance racial equity. Only by consciously addressing racial inequity can the needs of residents--the majority of whom are BIPOC-- be successfully addressed and the potential for replicating inequity be greatly reduced. With this priority of spatial justice in mind, we ask that NCHFA:

- (1) **Conduct a Racial Equity Impact Assessment.** An REIA can be a vital tool for preventing institutional racism and identifying new ways to remedy existing inequities. The persistence of deep racial disparities and divisions across housing in NC is evidence of institutional racism—the routine, often invisible and unintentional, production of inequitable social opportunities and outcomes through policies, programs, and funding decisions. Findings from the REIA could clearly depict who LIHTC serves and who it burdens. Currently, most data informing the QAP is location-based. While location is often indicative of historic and modern investment patterns, data on resident outcomes is essential to policy creation. As of 2017, 59.8% of NC LIHTC residents are BIPOC; thus, in order to shape policy in response to resident outcomes, race must specifically be addressed in program evaluation. Chicago, which has its own QAP separate from the state of Illinois, [conducted a very successful Racial Equity Impact Assessment](#) that resulted in many [changes to its QAP](#) to better serve not only residents, but also private developers.
- (2) **Offer additional points for projects that outline an approach to tenant application and screening that lowers traditional barriers to tenancy.** The application and screening process must account for conditions in employment, credit, income, criminal and rental



history that affect an applicant's ability to meet traditional requirements for tenancy in addition to reducing barriers to renting such as application fees, security deposits, etc. Rigid screening and strict eligibility criteria can turn away applicants with a no-fault eviction, with low credit score but alternative means of proving responsible tenancy, and proof of rehabilitation after incarceration, all of whom would greatly benefit from affordable housing. As these barriers disproportionately impede BIPOC and low-income applicants, programs designed to mitigate their impact would reduce racial inequities correlated to housing and better serve those most in need of affordable housing.

- (3) **Institute a LIHTC Tenant Bill of Rights.** Other federal housing-finance programs outline robust tenant rights and protections under HUD guidelines. The IRS, however, has not awarded such protections to LIHTC residents. The lack of protection places an already vulnerable, low-income population in a defenseless position and they may be evicted or denied admission for arbitrary or unlawful reasons. Residents of LIHTC properties deserve defined rights and procedures protecting them from discriminatory or harmful management practices. NCHFA should author a Tenant Bill of Rights that includes at least: (1) The right to organize without interference from owners, partners, investors, or property managers, (2) Specific eviction procedures, including the right to a grievance procedure and requirements for the content, timing, and service of a notice to terminate a tenancy, (3) A requirement that LIHTC owners disclose why they denied a prospective tenant's lease application, and (4) a requirement that owners provide a 12-month notification to residents before the LIHTC affordability period ends.

MAINTENANCE

Despite existing requirements for regular on-site inspections, some LIHTC properties are not healthy or safe for residents and their families. Maintenance and management issues in existing properties-- such as deferred maintenance, unresolved complaints, etc.-- contribute to lower standards of living, housing instability, and poor health outcomes for low-income residents.

A resident at Maureen Rd.-- a LIHTC RAD-converted property in Durham-- recounted her experience: "I have been dealing with sewage flooding in and through my apartment due to shoddy plumbing since the first day I moved in that unit two years ago, and [property managers] have done absolutely nothing about it. For two years, [they] have put small band aids and patches on a problem that required and still requires major surgery. In two years, [they] have done absolutely nothing to actually resolve these ongoing problems. I am a teacher, and I work hard to earn an honest living. I work hard for the things that I have. I pay my rent on time every month. I am a good tenant. The very first day of this brand new year of 2021, my apartment flooded with raw sewage, human waste, and feces for several hours... For hours, in the midst of a global pandemic, I watched my belongings, that I worked very hard to acquire, be contaminated and destroyed as they sat in pools and puddles of raw sewage, human waste, and feces that came straight from the sewer line under the building. For hours, I watched as the contractor and his assistant, a plumber, and maintenance tried their best to get the flooding of raw sewage to stop, but couldn't... My apartment... flooded every day, sometimes twice a day, since January 1, 2021 [as of January 18]. I have lost property. I have spent a



lot of extra money in gas, food, and laundry that I really couldn't afford to spend, just to live these past three weeks, which is now about to be four weeks. I have missed work. I have paid rent on a property that's uninhabitable... Put yourselves in my shoes. Put your children in my shoes. Put any member of your family in my shoes. Would you want yourself, your child, or any of your loved ones, for that matter, to be treated the way I have been and am being treated? Would you want to live in and through these conditions?" In light of these dehumanizing occurrences of ongoing disrepair, and in the interest of maintaining the quality of construction prioritized by the design standards of the QAP for the *entire* affordability period, we ask that NCHFA strengthen accountability and oversight mechanisms and introduce penalties for inadequate maintenance and property management by:

- (1) **Enacting consequences, such as exclusion from future Tax Credit allocations, for owners and managers who repeatedly take longer than 72 hours to respond to certain critical maintenance requests** that endanger the health and safety of residents. [The Georgia QAP](#) requires a 72-hour cure period for any noncompliance item that falls under the "health and safety" category according to UPCS.
- (2) **Requiring submission of maintenance reports and resident complaints & resolution reports in Annual Owner's Certification of Continuing Program Compliance.**
- (3) **Requiring the submission of a Property Maintenance and Management Plan during the Tax Credit application process.** Practices should focus on minimizing building maintenance needs and utility consumption, and provide a healthy, safe, and durable living environment for residents. At minimum, the manual and plan shall address the following topics: protocol for responding to tenant work orders, operations and maintenance guidance for all mechanical and electrical equipment and appliances, landscaping and hardscaping specifications and maintenance plan, pest management protocol, maintenance of active recreation and play spaces, and an occupancy turnover plan.
- (4) **Conduct a survey of LIHTC residents across the state to identify other concerns and to evaluate the efficacy of service and design standards set by the QAP.** As LIHTC aims to increase housing choice and affordability for low-income renters across NC, the development of the QAP must prioritize the needs of those renters. Data collected from a survey of resident experiences would be an invaluable tool for policy creation and program evaluation in the creation of resident-centered affordable housing. .

With the adoption of these comments in the NC QAP, the construction of affordable housing through LIHTC will better center residents by preserving existing affordable housing, ensuring the long-term quality of that housing, and protecting BIPOC, low-income, and vulnerable populations from discriminatory practices and the reproduction of systemic inequity.