

June 30, 2023
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Via e-mail to jpeasco@njhmfpa.gov

Re: Comment on the Proposed Amendments to the Qualified Application Plan (QAP)

Dear Mr. Peasco,

Thank you to you and the Agency for the opportunity to offer public comment on the changes proposed to be made to the Low-Income Housing Tax Credit (LIHTC) Qualified Application Plan (QAP) for the State of New Jersey.

More than a dozen developers of color who work in the New Jersey development space have convened at monthly meetings of the BIPOC Developers' Collaborative, facilitated by Monarch Housing Associates, since January 2023. During meetings, attendees discuss their experiences as developers of color; together, members of the Collaborative identify common barriers they encounter and identify pieces of policy that should be changed or expanded to better support the involvement and success of other BIPOC developers in the field.

One such piece of policy is New Jersey's LIHTC QAP, as it is the primary driver of the creation and rehabilitation of affordable housing across the country and a crucial funding option for affordable housing developers in this state. For New-Jersey based certified Minority Business Enterprises (MBEs) and Minority Woman Business Enterprises (WMBEs), the participation of both established and emerging developers of color in the development of affordable housing is a critical issue. Several members of the Collaborative responsible for the formulation of this response are experienced with the LIHTC program, having been members of development teams that applied for and were awarded credits through the program in recent years. Upon the release of the proposed

amendments, the Collaborative set about discussing and evaluating the QAP through a lens focused on racial equity for developers.

The real estate development industry as a whole is difficult to break into for minority developers. Due to decades of overt and structural racism, Black and brown Americans and their families have been denied opportunities to own homes and pursue advanced education, two factors which are major determinants of household and generational wealth. As a result, many people of color who are entering the development field lack the advanced education and experience required to secure positions in large development firms or personal reserves of capital to draw upon independently which their white peers possess. Those that turn to private lending institutions tend to lack connections which would boost their success in dealmaking or are turned away due to discriminatory lending practices.

All of these obstacles often lead developers of color to the affordable housing development sphere, where funding streams like the LIHTC program have less discriminatory requirements than private lenders. But the policies established in the QAP have long presented barriers to minority- and woman-owned development firms, especially those that are new to the field, inhibiting their access to LIHTC funding and limiting their participation in the program. BIPOC developers have to learn the intricacies of the regulations surrounding this funding, an additional burden; or, they partner with a senior developer who has experience with the regulations in return for sacrificing their stake in the project. Even then, developers aren't free of the significant financial obstacles imposed by syndicators and lenders—which disproportionately impact smaller firms, which minority-owned enterprises are more likely to be. As a result, developers that receive LIHTC funding to undertake projects are overwhelmingly white and male. Further, due to the concentration of LIHTC projects in low-income communities, which are also disproportionately likely to be home to communities of color and households headed by women, developers are unlikely to look like the residents of the communities that are ultimately being shaped by these developments.

The Collaborative recognizes the proposed changes which address these issues. Nonetheless, further refining the criteria in the QAP will provide BIPOC developers with

the support and agency they require for their participation in this program to be truly equitable. As such, the members have jointly reviewed the changes as proposed and offer these comments and suggestions in response.

Thank you, once again, for this opportunity.

Adenah Bayoh

Founder & CEO, Foya Development LLC

Mabel Elmore

COO, Helms and Elmore Equality Housing

Elaine Helms

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Nicole Lockett

Managing Director of Development, Genesis Companies

Local Initiatives Support Corporation (LISC) of Greater Newark

The BIPOC Developers' Collaborative

Of the 52 developers that received LIHTC funding from 2013 through 2022, **only three** were Black or Hispanic/Latino led/owned private development companies.

Combined, these three developers produced only 6 of the 187 developments funded in this time and were awarded a total of \$8,202,752, just over **3.5%** of the total funding allocated throughout the past decade.

In contrast, the seven most-awarded companies, all headed by white leadership, produced 93 of 187 developments and received \$111,913,330—**over half** of all the funding distributed through the LIHTC program in the past decade.

Data compiled by Monarch Housing Associates from <https://www.nj.gov/dca/hmfa/developers/lihtc/allocationawards/>.

On N.J.A.C. 5:80-33.15(a)21: Point Incentives for Developers with Previous Successful Experience.

- **We recommend that the previous experience category for awarding points be eliminated in its entirety.**
- There is a small group of developers who meet the existing definition of “successful development experience” and are therefore able to compete successfully for 9% LIHTC, and this same handful of developers continuously wins tax credits. Rewarding previous experience in this way only serves to consolidate allocations to the same developers claiming this point category, year after year, promoting the continued monopolization of LIHTC funding.
- By giving points for “successful development experience”, the QAP has created a barrier for entry for a diverse range of housing developers with the desire and ability to participate in the 9% LIHTC program. There are many for-profit and non-profit developers with the experience and ability to successfully develop and operate affordable housing financed by 9% LIHTC who fail to meet the narrow QAP definition of “successful development experience”. They include, but are not limited to:

- Developers with a 50% ownership role in one past LIHTC project.
 - Market-rate multifamily developers.
 - Affordable multifamily developers of smaller, non-LIHTC projects.
- This group of “inexperienced developers” who do not meet the QAP’s scoring criterium must partner with QAP-approved “experienced developers” in order to obtain 9% LIHTC funding. In many cases, the “inexperienced developer” in a partnership is responsible for significant portions of a project, such as securing a development site and municipal entitlements. Nonetheless, they must give up or greatly reduce their decision-making power and profits from developer fees in favor of their partnership with an “experienced developer” to receive points and funding. The “inexperienced developers” rarely get a 50% ownership stake in these projects and therefore cannot build the experience required to compete for 9% LIHTC financing per the existing QAP.
 - Instead, many emerging developers utilize the Agency’s 4% LIHTC financing program to gain the experience they need to compete for 9% LIHTC financing. There are no threshold criteria for “successful experience” required for developers applying for 4% LIHTC financing. The Agency relies on its own underwriting of the development team as well as commitment letters from construction lenders, permanent lenders, and tax credit investors to establish sufficient developer experience.
 - It is worth noting that 4% LIHTC transactions are typically more complicated to execute than 9% LIHTC transactions due to the added layer of tax-exempt bond financing required. Additionally, developers of 4% LIHTC projects have the additional burden of raising gap funding to a greater extent than is necessary for 9% LIHTC transactions to be financially feasible.
 - This “work around” to gain development experience by utilizing 4% LIHTC financing delays emerging developers’ access to 9% LIHTC financing unnecessarily. It is realistic to assume it would require at least a five year period or longer to raise enough gap funding, develop two tax credit projects, and have them both achieve stabilized occupancy for 6 months in order to meet the

QAP's definition of "successful development experience" for 9% LIHTC projects.

- We recognize that the added category granting previous experience points to 50% owner applicants who have previously held 20% ownership in three LIHTC projects is intended to provide a pathway for those W/MBEs that are included as junior development partners in accordance with the criteria in the new category at 5:80-33.15(a)6.
- However, considering the competitive nature of the LIHTC award process, there is no guarantee that the projects in which junior M/WBE partners are included will be awarded three times at all, let alone within a reasonable period of time. It is reasonable to assume that gaining the experience as a 20% partner as delineated in the new scoring criteria could take ten years.

On N.J.A.C. 5:80-33.15(a)6: Point Incentives for Partnership with Minority and Women Business Enterprises (M/WBEs)

- **We recommend that a completely new, separate point category be created, in which the ownership stake which M/WBEs must hold in applying projects is increased to a minimum of 50% to be awarded points.**
- **Further, we recommend that bonus points in this category be awarded to projects which are 100% led by a M/WBE.**
- Minority developers, if included at the minimum 20% ownership stake required by the rule as proposed, will not have a large enough stake in the project to have a significant sway in decision-making. Further, this rule does not include any explicit requirements for the senior partner to facilitate collaboration or training that would ensure that junior partners receive adequate experience from the partnership. Nor does this rule guarantee the junior partner any portion of the developer's fee. This amendment, as it stands, includes no stipulations that require senior partners to provide genuine inclusion and training of M/WBEs through their partnership.

- We want to be certain that a provision for the inclusion of M/WBEs like this promotes genuinely equitable partnerships. As the criterion currently stands, we are concerned that the inclusion of a M/WBE will be marked on paper simply to secure points on the application and will not truly result in the training and capacity-building of minority owners of development corporations that we should seek to promote.
- By increasing the minimum stake to receive points to 50%, a M/WBE partner meeting even the minimum requirement for this criterium will be granted significant sway in the decisions being made throughout the project's development and is more likely to be included in the development process in a meaningful way, increasing the likelihood that they will receive effective training and experience thanks to their increased stake.
- Further, by awarding projects that are 100% W/MBE-led additional points on top of those granted for meeting the minimum 50% requirement, the full, independent participation of BIPOC developers would also be encouraged, addressing their historical exclusion in the program. If the same quantity of points is granted for projects with 50% M/WBE involvement and 100% W/MBE involvement, senior developers already familiar with the program would have the option to continuously partner with BIPOC developers who operate at a reduced capacity, effectively trapping BIPOC developers in partnerships with smaller stakes. This increased incentive will encourage 100% BIPOC-led companies to apply as well as make them more competitive in the field.

On N.J.A.C. 5:80-33.4(a): The Continued Inclusion of the Total Development Cost Cap

- **We recommend eliminating the total development cost restriction for applicants to the 9% credit awards.**
- The continued inclusion of the cost cap restricts the types of projects that can apply for funding. Developments that are larger, denser, taller, more urban, or equipped with more features and services (i.e. sustainable technology) are more

likely to have increased construction costs. Imposing a cap on total development cost counteracts other incentives in the QAP related to a project's location, design, and provision of services.

- There is already a cap on the number of credits that can be allocated to each individual awardee. Therefore, if it has no bearing on the total amount of credits that can be granted to the project, the total development cost of the project should not be considered.
- Further, applicants to the 4% LIHTC credit program are not subjected to a cost cap, despite the relative complexity of the financing required to undertake them. Applicants to the 9% program should not be subjected to cost caps when more complex projects in the 4% program are not.

On N.J.A.C. 5:80-33.13(c): Penalty Imposed on Future LIHTC Applications by Applicants to Hardship Funds

- **We recommend removing the stipulation that awardees that apply for hardship funds be restricted from applying for tax credits in the following year's round.**
- In most cases, especially as interest rates are elevated, inflation runs rampant and the cost of construction materials continues to soar, developers who encounter hardship and as a result apply for additional funding do so through no fault of their own.
- Penalizing developers for extenuating circumstances which are out of their control prevents their future participation in the application process; it also disincentivizes the participation of other developers in the program for fear of encountering hardship and the suffering the same consequences. Both effects further reduce the number of potential applicants in the field and dampen the potential number of projects that can be funded and units that can be built.

On N.J.A.C. 5:80-33.12(c)21vii, -33.15(a)19, and -33.15(a)20: New Point Penalties for Bad Actors

- **We commend the proposed additions which deduct points from applications with the involvement of parties which were found to have acted in opposition to the aims and legal structures of the QAP.**
- Specifically, parties found to have acted to undermine the right of first refusal granted to non-profits at the end of a project's extended compliance period, to have acted in violation of the Fair Housing Act, or to have acted to terminate an extended affordability commitment are penalized under these additions.
- These additions work in tandem to ensure that parties with stakes in LIHTC projects adhere to legislation that increases and protects the supply of affordable housing throughout the state and to protect vulnerable marginalized populations from discrimination and displacement.

On N.J.A.C. 5:80-33.19(a)1ii: New Criteria for Deciding Ties

- **We respectfully request that the language specifying the conditions of the tiebreaker for projects located in TUMs be clarified.**
- As it currently stands, the proposed amendment states that “within a TUM, a tax credit reservation shall be awarded to the project located in the municipality with the highest MRI (that is, with the greatest distress)”, at 5:80-33.19(a)1i. However, according to the definition for the MRI included earlier in the QAP, which is also used in the document in which the official scores are presented, higher scores on the MRI designate a lower level of distress; in other words, a municipality with a score of 1 would be considered the most highly distressed, whereas a municipality with a score of 564 would be considered the least distressed. This definition contradicts the statement made in the proposed amendment and creates confusion.
- Clarification on the intended meaning of this amendment will allow agencies to accurately evaluate the potential repercussions of this proposed change.

- We appreciate the introduction of the new primary tiebreakers, which replace the race-to-the-bottom competition in terms of project costs which the previous tiebreaker encouraged.
- We particularly commend the primary tiebreaker proposed to be established for competing projects located outside of TUMs. Giving priority to projects located in those non-TUM municipalities which either have never hosted or have gone the longest since hosting a LIHTC project is a key step towards ensuring that the municipalities that have consistently been the most reluctant to affirmatively furthering fair housing are more likely to do so in the event of a tie.