

October 16, 2014

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Mr. Reecy:

Thank you for the opportunity to comment on the proposed Requests for Applications for Housing Credit Financing for Affordable Housing Developments Located in Medium and Small Counties (RFA 2014-114); and Large Counties (RFA 2014-115 and RFA 2014-116). As you finalize the draft RFAs, we respectfully ask that you consider the following recommendations.

1. Do Not Include Career Resource Centers as a Service for Proximity Scoring

Physical proximity to a Career Source Center does not necessarily benefit low income households in the same way essential community services such as public transit, grocery stores and pharmacies do. Additionally, the late addition of this scoring criterion will cause a race to identify and “tie-up” the few appropriately entitled sites located near existing Career Source Centers which in turn will cause an increase in land prices and inefficient use of resources. Generally, Career Source Centers are located in areas of high poverty and inadequate access to other community services. For example, a Career Source Center in Sarasota is located in an area of high poverty and minority concentration adjacent to railroad tracks and light industrial land uses; in Lee County a Career Source Center is located on a site adjacent to office and warehouse uses and not easily accessible by transit. It should be Corporation’s goal to promote equal opportunity housing in areas which provide low income households the ability to access resources and amenities enjoyed by non-low income households. These opportunities exist in better school districts and neighborhoods with strong job concentrations etc. To allocate funding awards based upon the location of a Career Source Center, is counterproductive and instead will perpetuate poverty as an unintended consequence. Alternatively if the Corporation wants to add another Community Service to the proximity scoring criteria, it should award points to proposed developments located in high performing school districts

2. Utilize the Corporation’s Basis Boost Authority for Developments Serving Homeless Persons

Section II (I) of the 2015 Florida QAP authorizes the Corporation to designate a development as a high-cost area through the authority granted by the Housing and Economic Recovery Act of 2008. Specifically, Homeless Developments awarded in a competitive solicitation process are eligible for a 30% basis boost as if the development were located in a Difficult to Develop Area or a Qualified Census Tract. However, in the 2013 Geographic RFAs the Corporation did not utilize this authority. This year, please combine this existing policy tool with the Corporation’s goal of allocating Housing Tax Credits to 2-3 developments serving homeless individuals. Additionally, please consider allowing a higher developer fee (21%) offset by a capitalized operating reserve to enhance the feasibility of these projects.

3. Do not Reduce the “Perfect” Proximity Score for Miami-Dade County

A recent comment suggested reducing the score necessary to obtain the maximum proximity score in Miami-Dade County because the only sites which can achieve the current threshold are urban infill sites. The scoring criteria in the 2013 Geographic RFAs strongly imply that it is the Corporation’s goal to encourage urban infill development (e.g. incentivizing development near tri-rail and sun rail stations, utilizing proximity scores). Reducing the score required to obtain the maximum points for proximity would encourage sprawl and impose costs on low-income households by forcing them to travel longer distances to essential services.

4. Create a one-time set-aside of Housing Tax Credits to “top-off” Small and Medium County Developments Awarded 2014 Housing Tax Credits in the event the 9% credit rate is reinstated as expected.

The Housing and Economic Recovery Act of 2008 instituted a 9% floor for competitive Housing Tax Credits which ultimately expired in December of 2013. At the time of the Small-Medium County Geographic RFA in 2013, neither the Corporation nor the development community knew whether the Congress would act to extend the floor. Under the advice of the Corporation, applicants competing under RFA 2013-001 used an 8% Housing Tax Credit assumption when developing their project budgets. However, by the time the allocation process was complete and applicants were invited to enter underwriting, the floor had expired and the Applicable Federal Rate (AFR) had fallen to approximately 7.54%. Now, the Corporation has committed Housing Tax Credits to developments which may or may not be feasible at the current AFR. Construction costs are rapidly rising in response to improved market conditions. Affordable housing developers are currently competing with market rate developments for construction pricing. Please consider creating a set-aside of Housing Tax Credits limited to applicants receiving invitations to underwriting under RFA 2013-001 sufficient to bring the total project funding to the level it would have been had the AFR not fallen below 8%. Within the set-aside, the Corporation may establish scoring criteria to re-test whether the development remains feasible at the 8% rate.

Alternatively, the Corporation should consider amending its proposed “disincentive to withdraw” to exempt from penalization any applicants awarded Housing Tax Credits under RFA 2013-001 who are unable to complete underwriting due to the AFR.

5. Institute an Application Cap

We join many others in the affordable housing community who have asked the Corporation to institute a limit on the number of applications each developer or financial beneficiary may submit under each RFA. Specifically, we request that the Corporation limit the amount of Housing Tax Credits which may be awarded to a financial beneficiary under each RFA, regardless of the number of applications submitted. Many other state Housing Finance Agencies use this technique including Florida’s peers and neighbors.

Other large-state HFAs use similar mechanisms to prevent manipulation of the allocation process. The Texas Department of Housing and Community Affairs (TDHCA) limits each financial

beneficiary to a maximum aggregate award of \$3,000,000 of annual Housing Tax Credits. Additionally, TDHCA utilizes a regional allocation formula to balance the award of Housing Tax Credits across the state. Within each region no principal may take more than 15% of the total available Housing Tax Credit allocation.

Similarly, the Virginia Housing Development Authority (VHDA) will not award more than 15% of the states total annual Housing Tax Credits allocation to any one applicant or related applicants regardless of the number of applications submitted. In order to prevent system manipulation by firms with multiple principals, the Virginia QAP grants VHDA's Executive Director sufficient discretion to determine whether a person or entity "has exercised or will exercise, directly or indirectly, substantial control over the applicant or has performed or will perform (or has assisted or will assist the applicant in the performance of), directly or indirectly, substantial responsibilities or functions customarily performed by applicants with respect to applications or developments." In this way VHDA uses a simple but elegant policy tool to prevent bad actors from manipulating the system while encouraging the larger pool of qualified applicants to propose many quality developments each year. The Ohio Housing Finance Agency (OHFA) simply imposes a \$2,000,000 annual Housing Tax Credit cap for developers or general partners.

Alabama and Georgia both limit the total Housing Tax Credit amount which may be awarded to any single beneficiary. The Alabama Housing Finance Agency will not award more than 12% of the state's total tax credit ceiling to any applicant. The agency uses a thorough examination of the true identities of interest to uncover any related applications and keep multi-principal firms from manipulating the system to obtain a larger portion of the state's housing resources. In Georgia, the Department of Community Affairs (DCA) will not award more than \$1,800,000 of annual tax credits to any principal regardless of the total number of applications submitted. Additionally, DCA will not award more than \$1,000,000 of annual tax credits to any one project. These provisions work together to encourage developers with multiple awards in a single year to make more efficient use of Georgia's affordable housing resources.

Each of the Corporations' peers and neighbors have a policy tool in place to prevent developers from manipulating the allocation process by submitting superfluous applications. Some form of an application cap is the only effective means of aligning developer incentives with that of the Corporation – the production of high quality well located affordable housing – rather than the allocation system itself. A limit on the maximum annual tax credit award any applicant or related applicants can win will cause developers to focus on the quality rather than the quantity of their applications. Additionally, it will save time for Florida Housing staff allowing them to focus on the Corporation's core mission.

Any limit on the number of applications a principal may submit, or the total annual Housing Tax Credit award a principal may win, should except partnerships with PHAs and *bona fide* not-for-profit organizations (and their respective for-profit subsidiaries) in which the affiliate of the PHA or not-for-profit organization will retain the long term majority interest in the general partner. Otherwise, the most capable for-profit developers would forego opportunities to lend their expertise to mission driven housing providers.

For reference, we have included relevant excerpts from other states' QAPs below.

Examples from other State Housing Finance Agencies

Alabama – (Page 21 of the Draft 2015 Alabama Qualified Allocation Plan)

Owner & Project Cap. AHFA will establish a maximum amount of Housing Credits (Cap) an applicant and a project will be allocated. The intent of the Cap is to promote fair and objective administration of the Housing Credit program by ensuring that no owner(s), related entity, or project can receive an excessive share of the available Housing Credits in any application cycle.

No single project will be allocated Housing Credits in excess of 12% of the state's 2015 Housing Credit ceiling, as defined in Section 42(h)(3)(c) of the IRC (Ceiling) and no owner(s), related entities, principals or individuals as defined below shall be allocated Housing Credits in excess of 12% of the Ceiling. Regardless of each individual owner's percentage of ownership in a project, 100% of the project's Housing Credit allocation will count towards the Cap for all owners.

The Housing Credit Cap will be determined by the amount of Housing Credits the project is eligible to receive using AHFA's determined eligible basis before the increase in basis is applied. The amount of Housing Credit received by the increase in basis will be allowed to exceed the owner and project Cap for one project only and the owner will not be eligible for any additional Housing Credit allocations. In all circumstances, all Housing Credits received in the 2015 competitive cycle will count toward the individual owner's Cap.

When Housing Credits are combined with HOME funds, no related entities, principals or individuals as defined by AHFA's identity of interest shall be allocated HOME funds in excess of 20% of the state's 2015 HOME fund allocation. Regardless of the percentage of ownership in a project, 100% of the project's HOME fund allocation will count towards the Cap.

Identity of Interest. AHFA requires that the applicant identify the existence of an identity of interest with any other party to the project including the sale of real estate. "Identity of Interest" is defined as follows:

Parties that have an identity of interest are presumed to be sufficiently related for them to be treated as a single applicant for purposes of the Cap. As described below, AHFA may in its discretion identify other parties whose relationship is sufficiently close to cause them to be treated as a single applicant for purposes of the Cap. A significant factor in the evaluation will be whether, based on the facts and circumstances, a primary purpose of a party's involvement in a project appears to be avoidance of the Cap.

The following relationships constitute an identity of interest for purposes of identifying related parties in order to apply the Cap:

- (i.) Individual persons are considered related to each other (a.) if they have any of the following direct relationships: parent, child, spouse, son-in-law, daughter-in-law, father-in-law, and mother-in-law, including any such direct relationship created by marriage, remarriage, adoption, or any other legally recognized status, or (b.) if one individual is an employer, by common law or otherwise, of the other.
- (ii.) Entities are considered related to each other (a.) if any director, shareholder, partner, member or any other type of owner of any entity would be considered a related individual (under item a. above) to any director, shareholder, partner, member or any other type of

- owner of another entity, (b.) if the entity has the ability to control another entity, or (c.) if the entity owns a material interest in another entity. An entity will be presumed to control another entity if it has a percentage of ownership in the other entity or the ability to appoint a percentage of the members of the other entity's governing body (i.e., board of directors, board of trustees, partners, managers, etc...) that would permit it to control the other entity either by operation of law or by agreement. A material interest means any ownership interest in excess of 20% of the stock, partnership interests, membership interests or other forms of ownership of any entity; provided, however, that ownership interests held by Housing Credit investors, Housing Credit syndicators or special administrative partners or members shall be disregarded for purposes of 20% test.
- (iii.) Without limiting the above, a trust will be considered related to any individual or entity if any trustee, trustor, grantor, settlor, beneficiary, permissible distributee, any person or entity serving a role similar to the foregoing, or any person holding power of appointment (general or limited) over trust property would be considered related to the individual or entity under items a. or b. above.
 - (iv.) Any other relationship which, while not specifically listed above, is determined to constitute an identity of interest because it is a relationship at least as close as an identity of interest described above or because it would permit an allocation that violates the intent of the Cap.

Georgia – (Page 19-20 of the 2014 Georgia Qualified Allocation Plan –Core)

C. Maximum Number of Applications.

DCA will assign sequential project numbers to all Applications in the order they are received, and prior to any form of Application review. Applicants will be permitted to submit a maximum of four (4) Applications for funding resources under the Plan. This limitation applies to Ownership interests of all proposed Project Participants except for Syndicators. Ownership interests of all Project Participants in the proposed Applications will be reviewed. If it is determined that a Project Participant has proposed Ownership interest in more than four (4) Applications, DCA will only evaluate the first four (4) Applications submitted to DCA. Any other Applications which include the same Project Participant will be considered ineligible and will not be evaluated.

D. Award Limitations

1. **Project Limitations.** DCA will not award more than \$1,000,000 of credits to any project in the competitive round. DCA may consider a waiver of these requirements for projects that show extraordinary need. In no event will such waiver exceed \$1,200,000. Such a waiver must be obtained in the pre-determination process.
2. **Maximum Ownership/Development Interests.** Applicants will be limited to direct or indirect Ownership/Development interest in a maximum of two (2) selected projects in which the combined total Federal Credit from the 2014 competitive funding round cannot exceed one million eight hundred thousand dollars (\$1,800,000) and/or total HOME funding cannot exceed twenty five percent (25%) of the total HOME Loan resources available. This limitation applies to direct or indirect Ownership/Development interests of all proposed Project Participants, except Syndicators. Once an applicant has been awarded projects that meet the above limits, all of that Applicant's lower scoring projects will be deemed ineligible. For non-profit applicants, DCA will look at Executive Directors and common threads of effective control as well as whether different non-profit entities have met DCA Qualification requirements through the same individuals or entities.
3. **Adjustment of Maximum Number of Projects Allowed.** In the event an Owner/Developer fails to meet deadlines on projects, has a significant number of projects under development but not completed or is experiencing a financial issue with regard to an existing project, DCA may elect to reduce the number of projects that can be awarded under the project cap. This determination can be made up to the announcement of awards.

Texas – (Page 6 of the 2014 Texas Qualified Allocation Plan)

(b) Maximum Request Limit (Competitive HTC Only). For any given Development, an Applicant may not request more than 150 percent of the credit amount available in the sub-region based on estimates released by the Department on December 1, or \$1,500,000, whichever is less, or \$2,000,000 for Applications under the At-Risk Set-Aside. The Department will consider the amount in the Funding Request of the pre-application and Application to be the amount of Housing Tax Credits requested and will automatically reduce the Applicant's request to the maximum allowable under this subsection if exceeded. Regardless of the credit amount requested or any subsequent changes to the request made by staff, the Board may not award to any individual Development more than \$2 million in a single Application Round. (§2306.6711(b))

(Page 7 of the 2014 Texas Qualified Allocation Plan)

(a) Credit Amount (Competitive HTC Only). (§2306.6711(b)) The Board may not award or allocate to an Applicant, Developer, Affiliate or Guarantor (unless the Guarantor is also the General Contractor, and is not a Principal of the Applicant, Developer or Affiliate of the Development Owner) Housing Tax Credits in an aggregate amount greater than \$3 million in a single Application Round. All entities that are under common Control are Affiliates. For purposes of determining the \$3 million limitation, a Person is not deemed to be an Applicant, Developer, Affiliate or Guarantor solely because it:

- (1) raises or provides equity;
- (2) provides "qualified commercial financing;"
- (3) is a Qualified Nonprofit Organization or other not-for-profit entity that is providing solely loan funds, grant funds or social services; or
- (4) receives fees as a Development Consultant or Developer that do not exceed 10 percent of the Developer Fee (or 20 percent for Qualified Nonprofit Developments and other Developments in which an entity that is exempt from federal income taxes owns at least 50% of the General Partner) to be paid or \$150,000, whichever is greater.

(Page 9 of the 2014 Texas Qualified Allocation Plan)

- (1) Regional Allocation Formula. The Department shall initially make available in each Rural Area and Urban Area of each Uniform State Service Region ("sub-region") Housing Tax Credits in an amount consistent with the Regional Allocation Formula developed in compliance with Texas Government Code, §2306.1115. The process of awarding the funds made available within each sub-region shall follow the process described in this section. Where a particular situation that is not contemplated and addressed explicitly by the process described herein, Department staff shall formulate a recommendation for the Board's consideration based on the objectives of regional allocation together with other policies and purposes set out in Texas Government Code, Chapter 2306 and the Department shall provide Applicants the opportunity to comment on and propose alternatives to such a recommendation. In general, such a recommendation shall not involve broad reductions in the funding request amounts solely to accommodate regional allocation and shall not involve rearranging the priority of Applications within a particular sub-region or set-aside except as described herein. If the Department determines that an allocation recommendation would cause a violation of the \$3million credit limit per Applicant, the Department will make its recommendation by selecting the Development(s) that most effectively satisfy the Department's goals in meeting set-aside and regional allocation goals. Where sufficient credit becomes available to award an application on the waiting list late in the

calendar year, staff may allow flexibility in meeting the Carryover Allocation submission deadline to ensure to the fullest extent feasible that available resources are allocated by December 31.

Virginia - (Page 20 of the 2014 Virginia Qualified Allocation Plan)

Notwithstanding anything contained herein, the total amount of credits that may be awarded in any credit year after credit year 2001 to any applicant or to any related applicants for one or more developments shall not exceed 15% of Virginia's per capita dollar amount of credits for such credit year (the "credit cap"). However, if the amount of credits to be reserved in any such credit year to all applications assigned a total number of points at or above the threshold amount set forth above shall be less than Virginia's dollar amount of credits available for such credit year, then the Authority's board of commissioners may waive the credit cap to the extent it deems necessary to reserve credits in an amount at least equal to such dollar amount of credits. Applicants shall be deemed to be related if any principal in a proposed development or any person or entity related to the applicant or principal will be a principal in any other proposed development or developments. For purposes of this paragraph, a principal shall also include any person or entity who, in the determination of the executive director, has exercised or will exercise, directly or indirectly, substantial control over the applicant or has performed or will perform (or has assisted or will assist the applicant in the performance of), directly or indirectly, substantial responsibilities or functions customarily performed by applicants with respect to applications or developments. For the purpose of determining whether any person or entity is related to the applicant or principal, persons or entities shall be deemed to be related if the executive director determines that any substantial relationship existed, either directly between them or indirectly through a series of one or more substantial relationships (e.g., if party A has a substantial relationship with party B and if party B has a substantial relationship with party C, then A has a substantial relationship with both party B and party C), at any time within three years of the filing of the application for the credits. In determining in any credit year whether an applicant has a substantial relationship with another applicant with respect to any application for which credits were awarded in any prior credit year, the executive director shall determine whether the applicants were related as of the date of the filing of such prior credit year's application or within three years prior thereto and shall not consider any relationships or any changes in relationships subsequent to such date. Substantial relationships shall include, but not be limited to, the following relationships (in each of the following relationships, the persons or entities involved in the relationship are deemed to be related to each other): (i) the persons are in the same immediate family (including, without limitation, a spouse, children, parents, grandparents, grandchildren, brothers, sisters, uncles, aunts, nieces, and nephews) and are living in the same household; (ii) the entities have one or more common general partners or members (including related persons and entities), or the entities have one or more common owners which (by themselves or together with any other related persons and entities) have, in the aggregate, 5% or more ownership interest in each entity; (iii) the entities are under the common control (e.g., the same person or persons and any related persons serve as a majority of the voting members of the boards of such entities or as chief executive officers of such entities) of one or more persons or entities (including related persons and entities); (iv) the person is a general partner, member or employee in the entity or is an owner (by himself or together with any other related persons and entities) of 5% or more ownership interest in the entity; (v) the entity is a general partner or member in the other entity or is an owner (by itself or together with any other related persons and entities) of 5% or more ownership interest in the other entity; or (vi) the person or entity is otherwise controlled, in whole or in part, by the other person or entity. In determining compliance with the credit cap with respect to any application, the executive director may exclude any person or entity related to the applicant or to any principal in such applicant if the executive director determines that (i) such person or entity will not participate, directly or indirectly, in matters relating to the applicant or the ownership of the development to be assisted by the credits

for which the application is submitted, (ii) such person or entity has no agreement or understanding relating to such application or the tax credits requested therein, and (iii) such person or entity will not receive a financial benefit from the tax credits requested in the application. A limited partner or other similar investor shall not be determined to be a principal and shall be excluded from the determination of related persons or entities unless the executive director shall determine that such limited partner or investor will, directly or indirectly, exercise control over the applicant or participate in matters relating to the ownership of the development substantially beyond the degree of control or participation that is usual and customary for limited partners or other similar investors with respect to developments assisted by the credits. If the award of multiple applications of any applicant or related applicants in any credit year shall cause the credit cap to be exceeded, such applicant or applicants shall, upon notice from the Authority, jointly designate those applications for which credits are not to be reserved so that such limitation shall not be exceeded. Such notice shall specify the date by which such designation shall be made. In the absence of any such designation by the date specified in such notice, the executive director shall make such designation as he or she shall determine to best serve the interests of the program. Each applicant and each principal therein shall make such certifications, shall disclose such facts and shall submit such documents to the Authority as the executive director may require to determine compliance with the credit cap. If an applicant or any principal therein makes any misrepresentation to the Authority concerning such applicant's or principal's relationship with any other person or entity, the executive director may reject any or all of such applicant's pending applications for reservation or allocation of credits, may terminate any or all reservations of credits to the applicant, and may prohibit such applicant, the principals therein and any persons and entities then or thereafter having a substantial relationship (in the determination of the executive director as described above) with the applicant or any principal therein from submitting applications for credits for such period of time as the executive director shall determine.

Ohio – (Page 20 of 2014 Ohio Qualified Allocation Plan)

Credit Limits

- There is a \$1,000,000 Housing Tax Credit cap for each proposed development.
- There is a \$2,000,000 Housing Tax Credit cap for developers or general partners that are Ohio based.
- There is a \$1,000,000 Housing Tax Credit cap for developers or general partners that are based outside of Ohio.