

TOWARD A POLICY FRAMEWORK FOR THE ALLOCATION OF LOW INCOME HOUSING TAX CREDITS

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The Low Income Housing Tax Credit (LIHTC) program is the largest single resource for the construction and rehabilitation of affordable housing in New Jersey, providing roughly \$100 million each year¹ in capital subsidies for development of low income rental housing. As such, the manner in which it is used is critical both with respect to the provision of affordable housing, and the creation of livable, economically integrated communities, both urban and suburban. Policy considerations must not be superseded by or supersede, but must be integrated with, civil rights concerns, in that the effect of each project on the racial and economic integration of the community in which it is located should be an important part of the LIHTC allocation process. In that regard, the Housing & Mortgage Finance Agency is given broad discretion by Federal law and regulations – within certain statutory parameters – to develop a Qualified Allocation Plan that is responsive to New Jersey’s particular circumstances and conditions.

The following points are proposed for discussion as a framework for an LIHTC allocation policy that addresses both affordable housing and community revitalization issues, while furthering the overall goal of building a more economically and racially integrated society. As discussed further in detail below, I believe that that policy must strike a balance between urban and suburban projects, while establishing clear criteria within each category for targeting resources. I have proposed allocating LIHTC resources along two principal priority categories – one urban and one suburban – while continuing to allow flexibility to address critical needs that do not fit neatly into either category.

(1) PRIORITY AREA 1: Provision of *family* LIHTC housing in appropriate suburban locations should be a priority.²

There is no question that the shortage of affordable family housing in suburban communities, particularly fast-growing communities that are also centers of job growth, is extreme. More affordable family rental housing in those communities will give low income families greater access to jobs, better schools and community services, while potentially furthering greater economic and racial diversity in those communities. Not all suburban rental housing proposals

¹ The HMFA allocates approximately \$15 million in tax credits per year, which represent a total of \$150 million in tax credits to the investor. Tax credit investors typically put 70 to 85 cents on the dollar into project equity, depending on the type of project. As a result, the total equity investment in low income projects arising from the LIHTC allocation process is likely to be between \$105 and \$125 million per year.

² It is clear that the pool of suburban senior affordable rental units, not only through LIHTC, but through HMFA, Section 8, Section 202, and the like, vastly exceeds the pool of suburban family affordable rental units relative to the respective need for each. The disparity is exacerbated by two further factors: (1) senior citizens can, and do, occupy many units in family housing (the converse is not true); and (2) many communities attempt to address senior citizen housing needs through other strategies as well, including assisted living, home sharing, and accessory apartments (“granny flats”). From all standpoints other than the obvious political one, there is no compelling argument to retain a senior cycle in the LIHTC process, either urban or suburban.

are equal, however, in terms of their contribution to economic and racial diversity. For that reason, within the suburban category, two critical criteria should be used to set priority among competing proposals:

- **Among suburban family LIHTC proposals, priority should be given to those with a meaningful integrative effect.**

A 100% low income project built on an isolated site, surrounded by non-residential uses, may help integrate the community in which it is built in no meaningful way other than the most narrowly technical statistical standpoint. In order to encourage projects that will contribute more meaningfully to economic or racial integration, the allocation process should favor:

- Mixed-income projects, in which the LIHTC units represent 25 to 50% of the total; and
 - Projects with higher percentages of LIHTC units, particularly small projects, that are sited so that they have an integrative effect on a neighborhood or section of the community.
- **Strong affirmative market standards must be established and implemented through a regional mobility strategy for all suburban family LIHTC projects.**

As noted earlier, building a project in a location where it has a *potential* integrative effect is far from ensuring that the project will indeed further racial integration or regional mobility. Indeed, the evidence is compelling that absent a concerted strategy to foster mobility, the project itself will have little impact. While affirmative marketing is critical, a scattershot approach in which each developer undertakes a separate effort for each project, often without the infrastructure to do an effective job, is often ineffective, however carefully monitored by the allocating agency.³

There is ample evidence to show that, absent compelling policies and actions to counteract this tendency, the great majority of affordable housing units in suburban areas are bought or rented by households that live within or close to the community in which the housing is located, and whose racial/ethnic characteristics are similar to those of that community. Without strong and effective affirmative marketing, the redirection of LIHTC or other housing resources to suburban areas will do little to foster more racially integrated communities in New Jersey.

The state, in conjunction with other public and private stakeholders, should develop a regional mobility strategy, and establish the infrastructure for an ongoing regional mobility program, within which a truly effective affirmative marketing process can be designed and implemented, not only for LIHTC projects, but for all affordable housing developments coming into being. While a separate initiative at the state level will be required to initiate a regional mobility strategy, the LIHTC allocation process should connect to that strategy, by requiring that developers participate, and potentially by requiring a fee from projects (perhaps part of the project marketing expense) that would be used to support regional mobility centers or other facilities around the state.

³ The ability, moreover, or even the inclination of a state agency such as the HMFA to mount a systematic, hands-on, effort to monitor and enforce affirmative marketing by large numbers of developers is also open to question.

(2) **PRIORITY AREA 2: Provision of housing in urban areas in locations that further integration or help implement a neighborhood revitalization strategy should be a priority.**

The allocation process should not disproportionately favor suburban over urban sites. Minority low-income households are disproportionately located in urban areas, and notwithstanding any integrative strategy, will continue to be so located for the foreseeable future. Moreover, since many are, and will continue to be, attached to their community for a variety of reasons, it would be unsound to argue, even in theory, that they must move out of their neighborhood in order to improve their housing conditions. At the same time, sound social policy dictates that LIHTC resources not be used in ways that exacerbate already excessive concentrations of minority lower income households in impacted neighborhoods in urban areas.

Priority among urban sites should go to those LIHTC projects which actively further economic or racial integration, or contribute to a neighborhood revitalization strategy⁴; such strategies, moreover, should meet two critical criteria:

- Strategies should be based on a comprehensive revitalization plan, developed through a process that engaged neighborhood residents and other stakeholders;⁵
- The plan should embody a strategy for increasing the economic diversity of the neighborhood, by encouraging mixed-income development or other means of attracting middle-income households to live in the neighborhood.

Projects in which the LIHTC units were 25 to 50% of the total units could receive priority as such, by furthering economic or racial integration.⁶ Other projects, including projects in which all or a larger percentage of the units were LIHTC units, could receive priority if they clearly

⁴ Within this category, clear preference should be given to family over senior citizen housing except where a compelling case is made that there is a critical need for senior units, or that including them serves some other compelling social policy.

⁵ There is a solid legal basis, in both Federal law and New Jersey law for establishing such a standard. 26 USC 42(m)(1)(B) provides that the QAP shall:

- Give preference in allocating housing credit dollar amounts among selected projects to
- (1) projects serving the lowest income tenants
 - (II) projects obligated to serve qualified tenants for the longest periods; and
 - (III) projects which are located in qualified census tracts ***and the development of which contributes to a concerted community revitalization plan*** (emphasis added)

Moreover, the recently enacted Neighborhood Revitalization State Tax Credit Law (c.415, P.L.2001) provides a clear statutory basis in New Jersey for the use of a neighborhood revitalization plan as a criterion for the allocation of state resources, as well as a reasonably clear definition of what constitutes such a plan.

⁶ It is worth noting that not all sections of all cities are racially impacted. Many New Jersey cities contain predominately white, middle-class neighborhoods such as Forest Hills in Newark or Elmo ra in Elizabeth. A 100% LIHTC project located in such an area would have as much integrative effect, at the neighborhood level, as a project in a predominately white suburban community.

furthered a neighborhood revitalization strategy meeting the above two criteria. It is worth noting that, of urban LIHTC projects approved in recent years, some HOPE VI projects arguably most closely fit the above description⁷.

(3) **Flexibility should be preserved to permit other projects addressing critical housing needs to be accommodated.**

Certain housing needs will remain that cannot be consistently accommodated within the two priority categories set forth above, including a variety of special needs housing, some senior housing in areas where that represents a critical need, and other special cases. An example of the latter might be the restoration of a historically significant building where the use of the LIHTC may be the only economically feasible means of preserving the building. The allocation process should retain enough flexibility so that these needs can be addressed through the LIHTC program.

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⁷ The extent to which HOPE VI projects should be prioritized, given the extent to which they potentially drain LIHTC resources and may be simultaneously reducing affordable housing resources in a community, is a complex issue, and needs further discussion. Given the current inclination of the Bush administration to cancel the program, however, this issue may soon become an academic one.