



OPEN COMMUNITIES ALLIANCE

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Thank you for this opportunity to comment on the Connecticut Housing Finance Authority's (CHFA) 2016 Draft Qualified Allocation Plan (QAP) for the federal Low Income Housing Tax Credit (LIHTC) program. We truly appreciate CHFA's effort to address the geographic imbalance within this program by creating an "Opportunity Characteristics" points category, unfortunately, under close analysis, the Draft 2016 QAP still fails to affirmatively further fair housing for the two primary reasons summarized below and discussed in more detail later in this letter. We welcome the opportunity to discuss our concerns with you directly.

- (1) Unfair Competition.** An application system that compels higher opportunity proposals to compete against moderate and lower opportunity proposals will not yield balanced development in a way that both permits the state to make up for its past 29 years running the LIHTC program in violation of federal and state civil rights protections and contribute to positive revitalization in struggling communities.

We recommend as a more effective and less discriminatory alternative the creation of "buckets" for higher opportunity and lower/moderate opportunity areas, as was proposed in SB 155 from the 2016 legislative session. Our proposal is that, in order to make up for the current LIHTC – and legally problematic – program imbalance in lower and moderate opportunity areas, 60% of the credits be placed in a bucket for "first dibs" for higher opportunity proposed developments, 25% be allocated for first dibs for catalytic projects in lower and moderate opportunity areas, and the remaining 15% be undesignated. This point structure will send the message to developers that should they take the time and effort to identify, purchase, and obtain zoning approval for a suitable higher opportunity proposal, it is more likely that credits will be available. It also makes clear that lower and moderate opportunity proposals that simply add additional low income housing to a low income area without being part of some broader effort to contribute to economic development in that area will not be competitive. If an insufficient number of applications meeting a threshold standard are received for any "bucket" the credits are returned to the general Connecticut pool and distributed without regard to geographic location, so no credits are lost for the state.

(2) Contrived Definition of “Opportunity.” The new “Opportunity Characteristics” category, which is ostensibly worth a maximum of 18 points, represents a loss of points fostering LIHTC development in genuine higher opportunity areas (as defined by the CT Department of Housing) as compared to the 2015 QAP. Because this is a contrived definition of opportunity not accompanied by mapping or analysis, it is impossible to assess how out of sync it is from accepted opportunity definitions used here in Connecticut, elsewhere in the country, and by the U.S. Department of Housing and Urban Development. What is clear, however, is that several of the factors included in Connecticut’s formulation would drive LIHTC development away from areas that have high performing schools, low levels of crime, access to entry level jobs – and are primarily non-minority populated.

CHFA Has Been On Notice of Its Fair Housing Violations

Testifying before the Housing Committee this past spring, Chairperson, and DOH Commissioner, Evonne M. Klein stated that while she could not support a legislative attempt to bring the LIHTC program into federal compliance, “Let me be clear, no one disagrees with the intent behind this bill, which is to build more affordable housing in areas of higher opportunity, but we must make sure we are achieving that goal in a realistic and feasible manner.”¹

While we were heartened by the Chairperson’s public commitment to the *intent* of distributing LIHTC credits in a more equitable manner, we are disappointed that the actual administration of the program under her watch has produced such segregating results and the 2016 Draft Qualified Allocation Plan does not attempt to substantively reform the program in order to act on this intent. Instead, the 2016 plan, if adopted without serious revision, would continue to strongly incentivize construction of affordable housing in high poverty disproportionately minority pockets of Connecticut, thus harming the life chances of many of our children of color from low-income backgrounds and reinforcing segregation in violation of federal and state law.²

As you know, legislative proposals to bring the administration of the Connecticut LIHTC program into compliance with its federal and state fair housing obligations, and modeled on successful QAP formulations in New Jersey, Pennsylvania, and Ohio, were brought forth in 2015 and 2016.³ In fact, for the past fifteen years, since 2002, and in various capacities, our leadership has worked to ensure that CHFA is fully aware of the deep conflict between the way it administers the LIHTC program and its fair housing obligations. This has included participation as counsel in the litigation of the *Asylum Hill NRZ v. King* case.

¹ Housing Committee of the Connecticut Legislature, *Hearing on Session Year 2016 raised bills*, March 1, 2016, Testimony of Evonne M. Klein, Chairperson, Connecticut Housing Finance Authority, 4 available at <https://www.cga.ct.gov/2016/HSGdata/Tmy/2016SB-00155-R000301-Commissioner%20Evonne%20Klein-TMY.PDF>.

² See 42 USC § 3608(e); CGS § 8-37ee.

³ Housing Committee of the Connecticut Legislature, *Hearing on Session Year 2016 raised bills*, March 1, 2016, Testimony of Erin Boggs in Support of Raised Bill 155, available at <https://www.cga.ct.gov/2016/HSGdata/Tmy/2016SB-00155-R000301-Erin%20Boggs-TMY.PDF>.

Throughout this period, the obligations to affirmatively further fair housing and avoid having a disparate impact on protected classes have only been further clarified. The U.S. Department of Housing and Urban Development's Disparate Impact rule, issued in February 2013, and Affirmatively Furthering Fair Housing rule, set forth in July 2015, in addition to the decision by the Supreme Court, in June 2015, in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project*, which specifically addressed the LIHTC program, have clarified and confirmed that the Fair Housing Act established federal obligations for the LIHTC program.⁴ The applicability of these obligations to CHFA is clearly spelled out in the legal memorandum of May 27, 2015.⁵

Program Performance

The Connecticut LIHTC program maintains a policy for distributing LIHTC credits that results in the vast majority of LIHTC units—88%, in fact—being placed *outside* of higher opportunity areas, as defined by the Department of Housing.⁶ Based on Open Communities Alliance's analysis, **this year, 0% of the credits in the program were allocated to higher opportunity areas.** While one development is in a lower opportunity area near newly developed transit and within West Hartford, a town with high performing schools, the overall program record is deeply concerning and the failure to make drastic program improvements this year is a strong indication that a new approach is long past due.

To frame this slightly differently, in the aforementioned U.S. Supreme Court cases of *TDHCA v. Inclusive Communities Project*, the court determined that because 92% of LIHTC allocations in the Dallas area were in areas where 50% minority or greater, claims of disparate impact were legitimately raised. By comparison, by OCA's analysis, 88% of the LIHTC developments in Fairfield County are located in such areas. In both Texas and Connecticut these areas are also predominately poverty concentrated. As a result, Connecticut's LIHTC program should raise significant fair housing red flags.

These practices perpetuate the deleterious effects of residential segregation by concentrating the construction of affordable housing for low-income residents into under-resourced pockets of Connecticut. Consequently, patterns of residential segregation historically produced by intentionally discriminatory policies endure, and are reinforced with state support, to this day.

Connecticut's housing policies, like those in many other parts of this nation, have often spelt out with brutal clarity that some of our children are worth less than others. It should not, and does not, have to be this way.

⁴ U.S. Department of Housing and Urban Development, *Affirmatively Furthering Fair Housing Rule Guidebook*, (2015), available at <https://hudexchange.info/resources/documents/AFFH-Rule-Guidebook.pdf>; *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.* 135 S. Ct. 2507, 2526 (2015).

⁵ See note 7.

⁶ Open Communities Alliance, *Fact Sheet: LIHTC Developments in Connecticut*, available at http://ctoca.org/policy_priorities.

Concerns Regarding the 2016 Draft QAP

In QAP comments over the last several years and in legislative testimony in 2015 and 2016 Open Communities Alliance has clearly outlined a proposal for meaningful changes to the QAP process—our proposal draws on reforms that have worked successfully in other states. Our position has been supported by LIHTC, poverty, and civil rights legal experts from across the country.⁷ While in other states many reforms have only come about after litigation was brought or threatened, we have strongly strived to encourage reform to Connecticut’s LIHTC program using non-litigation strategies.

OCA’s primary concerns with the 2016 draft QAP are as follows:

(1) Using Higher Opportunity and Moderate/Lower Opportunity “Buckets” is More Effective.

The Gazebo Effect. Prior to the litigation in *TDHCA v. ICP*, the Texas QAP allocated one point if a development had a gazebo. The danger in failing to set priorities geographically and then judging applications from different areas separately is Connecticut will be at risk of succumbing to the “Gazebo Effect”; that is, points tending to benefit lower opportunity areas will negate points likely to benefit higher opportunity areas and the proposals that win will not necessarily achieve either policy end. Instead, the proposals that are ultimately successful will have a gazebo – or an equivalent low-point scoring item.

Adopt Higher Opportunity-Lower/Moderate Opportunity “Bucket” Approach. As already discussed above, distributing LIHTC developments in balanced way across the state is critically important, so the state must set the appropriate targets to incentivize this equitable LIHTC distribution. To do so requires being cognizant of the program’s history and its fair housing obligations, and designing a program with the explicit aim of achieving geographic balance. As proposed in S.B. 155 and exemplified in New Jersey, Ohio,⁸ and Pennsylvania, this can be accomplished without the loss of credits by setting

⁷ Legal Memorandum from Michael Allen, Myron Orfield, and Florence Roisman, May 27, 2015, https://d3n8a8pro7vhmx.cloudfront.net/opencommunitiesalliance/pages/204/attachments/original/1449634444/OCA_response_memo_to_CHFA_re_QCT_and_6640_Final.docx?1449634444.

⁸ Recognizing its historic failure to incentive the construction of family developments in opportunity areas, the Ohio Housing Finance Agency, in 2015, won plaudits from fair housing advocates for modifying its LIHTC program to reward development proposals targeted in opportunity areas. It accomplished this goal by dividing its annual per capita LIHTC credit allocation into different policy-based pools, and it then specifically set aside monies for high opportunity family development proposals. Developments sited in eligible high opportunity census tracts compete only against like applications for the extent of the set aside, thus ensuring that high opportunity proposals will not have to unfairly compete against lower opportunity proposals—as they currently do in Connecticut. Center for Equal Justice, *Letter to Ohio Finance Agency on 2016 Draft QAP*, March 17, 2015, http://www.prrac.org/pdf/Comments_on_2016-2017_QAP_First_Draft_March_17_2015.pdf; Legal Aid Society of Southwest Ohio, LLC, *Letter to Ohio Finance Agency on 2015 Draft QAP*, December 5, 2014, available at http://www.prrac.org/pdf/Legal_Aid_Comments_2016_QAP.pdf; Ohio Housing Finance Agency, *2016-17 Qualified Allocation*

threshold levels for successful applications and putting unused credits back into the general pool in any given allocation year.

Such a change will create an incentive for developers to pursue higher opportunity development projects, work with towns to gain approval for them or challenge a zoning rejection through the Affordable Housing Appeals Act. Developers will become the state's partner in affirmatively furthering fair housing. In one of the most segregated states in the country with unconscionable racial disparities across issue areas, from health to unemployment to education to incarceration, we need every partner we can recruit.

Such an approach will also function to bring truly revitalizing developments to lower opportunity and moderate opportunity areas. Developments that do not increase poverty concentration and work in tandem with other community development efforts.

Unfair Competition by Geography. One example of the inequity of squaring proposals for different geographies against each other is the role of the current point scheme for proposals with proximity to transit. Transit access in a suburban community should not be measured in the same way as transit access in a city – a mile might be acceptable in a suburb, but a few blocks is more appropriate in a city. Regardless, the projects with the most convenient access to transit in both types of locations should benefit under QAP scoring for each “bucket” (higher opportunity or lower/moderate opportunity) if there are substantial differences in access to other types of opportunities. This is what S.B. 155 proposed in this past session and what is already in practice in other states such as New Jersey, without the loss of any credits.

Another example of the problem with “lumping” together proposals for different geographic areas is that it does not create the opportunity to plan for development income mixes that are best suited to a neighborhood. Research on neighborhood poverty concentration indicates that when poverty reaches higher levels upwards of 10-20% depending on various factors) it creates negative externalities, such as crime, the devaluation of properties, and decreased municipal tax revenue. It is therefore very important from a planning perspective to design subsidized housing allocations to avoid generating or entrenching poverty concentration.

Furthermore, as the Poverty & Race Research Action Council noted in 2013, “LIHTC developments should provide housing in situations where vouchers are difficult to use, in particular in high-opportunity neighborhoods where few housing units can be reached within voucher payment standards, and where landlords may prefer unsubsidized tenants.”^{9,10}

Plan, 30 June 17, 2015, available at https://ohiohome.org/ppd/documents/2016-2017_QAP-Final.pdf.

⁹ Poverty & Race Research Action Council, *Creating Balance in the Locations of LIHTC Developments*, 2 (February 2013), available at http://www.prrac.org/pdf/Balance_in_the_Locations_of_LIHTC_Developments.pdf.

Still, we should not abandon the placement of LIHTC developments in struggling communities. Instead, within the QAP the point allocations should incentivize developments with different targeted unit percentages in different neighborhoods. For example, a development in a higher opportunity area might appropriately have 40% targeted affordable units whereas a development in a lower opportunity area should have a much lower percentage. An approach using higher opportunity and lower/moderate opportunity buckets permits this kind of neighborhood nuance to enter into the LIHTC program.

Overall QAP Points Create Disincentives for Proposals Promoting Integration. Apart from the “Opportunity Characteristics” category, which is functionally a loss of one point that would benefit proposals in truly higher opportunity areas, the other scoring categories of the QAP disadvantage higher opportunity proposals. For example, the following points would tend to disadvantage a higher opportunity proposal.

| Point category | Maximum Points | Explanation |
|--|----------------|--|
| Supportive Housing | 6 | More difficult to get through exclusionary zoning |
| Family Supportive Housing Priority | 1 | Same |
| Combined points for 65% of households at either below 25% AMI or 50% AMI | 13 | Same |
| Preserves At-Risk Housing | 5 | Most existing subsidized housing is in lower opportunity areas |
| Cost Effectiveness | 6 | Does not properly consider potentially higher land costs in higher opportunity areas |
| Priority Locations | 5 | All benefit lower opportunity proposals |
| Transit Oriented Development | 4 | Public transit has been developed in a racialized manner |
| Historic place/Brown field | 2 | More likely to be in lower opportunity area |

¹⁰ We also encourage CHFA to be cautious of studies indicating that LIHTC developments are beneficial to struggling communities. Such studies must be read carefully and frequently raise methodology concerns that undermine their conclusion, see e.g. Daniel Hertz, Where Should Low Income Housing Go, September 5, 2016 <http://cityobservatory.org/where-should-low-income-housing-go/>, or fail to take into account that community benefits realized might have been the same or greater with non-housing investments.

| | | |
|---|-----------|---|
| Qualified Census Tract | 1 | All but 2 out of over 100 QCTs are in lower opportunity areas in Connecticut |
| Municipal Resources | 1 | Higher opportunity areas less likely to be supportive of affordable housing proposals |
| Total Anti-Opportunity Points (out of 102) | 44 | |

Thus, overall, developer's in higher opportunity areas are at a distinct, 44 point, disadvantage.

The bottom line is that we need LIHTC housing developments built in a balanced manner across the entire state. To accomplish this, the state must set appropriate goals for where LIHTC program resources are allocated – taking into account the program's past imbalance – and prioritize points within its administration of the LIHTC program accordingly.

(2) Insufficient definition of opportunity.

In the 2016 Draft QAP, CHFA develops new "Opportunity Characteristics" category worth 18 points out of the QAP's total of 102. While the intent in creating this new category is laudable, this category functionally represents an overall loss of total points as compared to last year's QAP.

CT has Already Adopted Opportunity Mapping. There is no need to create a second opportunity definition when the state has already invested significant material resources to hire the Kirwan Institute, one of the most respected poverty and race data analysis centers in the country, to develop opportunity mapping. That mapping is already in use by the Department of Housing.

The Draft QAP "Opportunity Characteristics" Category Represents a Loss of Points for Opportunity. A close examination of the QAP definition of Opportunity reveals that it actually creates one fewer "pro-opportunity" point than the 2015 QAP. In the QAP new "Opportunity Characteristics" category, six points in the scheme come from the "Municipalities Having Less Assisted and Deed Restricted Housing" indicator, which existed in the 2015 QAP, although in last year's QAP that category was worth seven points – so one "pro-opportunity" point is already deducted as compared to last year's scoring.

The remaining possible 12 points come from a combination of factors, including:

| Indicator | Points |
|--|----------|
| Below average poverty rate: | 3 points |
| Above average performing school (as defined by scoring 8 to 10 on a designated index): | 3 points |
| Average performing schools (as defined by scoring 4 to 7 on a designated index): | 2 points |
| Employment in community: | 2 points |
| Access to higher education: | 2 points |

We will take these indicators one at a time.

- Below average poverty rate:** While this is a promising category, it will likely generate LIHTC proposals in areas with poverty rates that are just on the cusp of exceeding the state average (which would tend to be moderate or even low opportunity areas using the DOH definition of opportunity). Using genuine opportunity mapping and setting the goal of a significant percentage of LIHTC developments in higher opportunity areas helps avoid a government policy that functionally increases poverty in areas that are just shy of becoming poverty-concentrated to a level that generates negative externalities. Such areas need deep non-housing developments, not an increase in poverty. Still, for the sake of providing as friendly an assessment of the 2016 QAP as possible, we will assume that these points incentivize proposals in higher opportunity areas, so + 3 pro-opportunity points.
- Above average performing schools:** Again, the goal should be to open access to the highest performing schools, not those that are just above average. We are concerned that the same kind of “low hanging fruit” phenomenon described above would manifest with this category. Once more, considering the points in the best light, we will assume they support higher opportunity development. +3 pro-opportunity points.
- Average performing schools:** Increasing poverty concentration in areas where the schools are failing to excel does not make policy sense. If the state wants to invest in these areas, it should consider other investment strategies, such as deep educational investments or economic and community development support. -2 pro-opportunity points.

- **Employment in community:** A jobs-to-population ratio is a blunt instrument to determine if available jobs exist in a community. According to the Hartford Foundation for Public Giving, 65% of people living in Hartford and earning \$40,000 or less leave the city every day to travel for work. Conversely, 83% of Hartford’s jobs are filled by people from Hartford’s suburbs.¹¹ While there are jobs for people of lower incomes, and generally less education, in Hartford, clearly there are many more outside of Hartford. At the same time, Hartford has many jobs that require higher levels of education more common among the suburban population. The point is that just because there are jobs in a given town does not mean that the people living there occupy those jobs — and an enlightened approach would take into account spatial mismatches.

Another problem with this measure is that it does not account for job proximity. For a person living in the West End of Hartford the many jobs in West Hartford may be closer than employment opportunities in southeastern Hartford. These realities are not captured in this employment measure, but they are captured in the Department of Housing’s opportunity mapping. *-2 pro-opportunity points.*

- **Access to higher education:** While Open Communities Alliance appreciates the laudable goal of this indicator, it is totally divorced from the social science research on the nexus between neighborhood characteristics and future success in life. For example, there is mounting social science research—nearing a uniform consensus—indicating that living in a high crime area leads to measurably lower life outcomes for children, and yet crime rates are not part of the QAP “opportunity” assessment.

Contrary to these researched-based findings about healthy outcomes for children, as shown in the map below from the Connecticut State Colleges and Universities website, Connecticut community colleges tend to be located in municipalities where crime rates are higher and school performance is low.¹² These are the same municipalities that have the overwhelming majority of LIHTC units, are higher poverty and have a greater population of color. This indicator would incentivize less access to opportunity and maintain the unequal status quo. *-2 pro-opportunity points.*

¹¹ See Metro Hartford Progress Points Report, 2014, http://www.metrohartfordprogresspoints.org/downloads/Metro_Hartford_Progress_Points_2014.pdf.

¹² Map available at <http://www.ct.edu/about/map>.

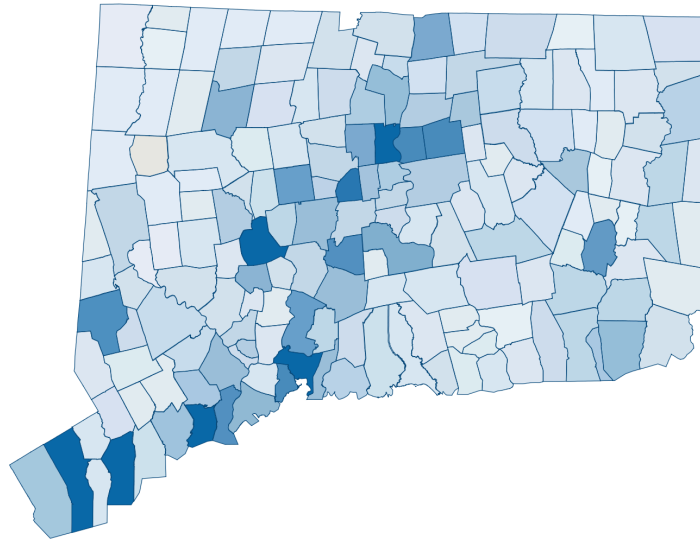
Displaying:

**All Connecticut Community
Colleges**

Connecticut Students:

52408

(Hover map to view town
data)



Thus, the 2016 Draft QAP actually has fewer pro-opportunity points than 2015. One point was taken was from the “Municipalities Having Less Assisted and Deed Restricted Housing” category, as compared to last year’s QAP, and the remaining points are a mix of “pro-opportunity” and “anti-opportunity” points that cancel each other out.

Conclusion

The 2016 Draft QAP in no way meaningfully brings fairness to the Connecticut LIHTC program. It will take more than the rearranging of points and the invention of new definitions to ensure that the program makes up for past wrongs and supports projects with legitimate revitalizing potential in struggling communities. What is required is thoughtful goal-setting that is cognizant of fair housing obligations and a complete overhaul in the structure of the QAP to meet these goals.

CHFA has considerable power to change how the LIHTC program is administered. It must be willing, though, to commit to a new approach to an old, obstinate problem. We encourage CHFA and Connecticut to live up to its legal obligations and to act now.

Thank you for this opportunity to comment.

Sincerely,

Erin Boggs, Esq.
Executive Director

