

August 22, 2024

Jessica Perry  
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Submitted via email: [jperry@phfa.org](mailto:jperry@phfa.org) and [DevelopmentInfo@phfa.org](mailto:DevelopmentInfo@phfa.org)

Dear Director Perry,

Regional Housing Legal Services (RHLS) and its specialty project the Pennsylvania Utility Law Project (PULP) appreciate the opportunity to comment on the Pennsylvania Housing Finance Agency's (Agency) draft 2025 Qualified Allocation Plan (QAP) for Low Income Housing Tax Credits (LIHTC). We raise a series of questions, and offer feedback, some global and some technical. We welcome the opportunity to work with the Agency to best ensure LIHTC developments meet the needs of all participants in the LIHTC system, including residents who reside in LIHTC developments and the communities in which these developments are located.

### **Introduction**

RHLS is a statewide legal services organization that provides legal representation to dozens of nonprofit developers and social service agencies, many of whom are seeking an allocation of LIHTC and / or agency financing. PULP is a specialized project of RHLS that is focused on utility and energy needs of low-income Pennsylvanians. PULP's mission is to secure just and equitable access to safe and affordable utility services for Pennsylvanians experiencing poverty. Our comments are primarily focused on those provisions of the QAP that may have an impact on nonprofit developers, social service agencies, and the communities they serve.

### **Increase Supportive Housing:**

We appreciate PHFA's long-standing commitment to expand access to supportive housing. The need for these housing resources remains critical, and with a shortage approaching 40,000 units of supportive housing across the Commonwealth, RHLS believes even more must be done. RHLS supports calls for increasing the supportive housing set aside with a goal of achieving a minimum of 100 units of supportive housing annually. Supportive housing developments provide a safe and stable home for some of Pennsylvania's most vulnerable residents. In the current

affordable housing emergency, we believe triaging resources to the most vulnerable is appropriate.

In addition to increasing the set aside, there are some important administrative and financing approaches that would promote the feasibility of supportive housing projects. As was dramatically presented in the “Strategies for Sustainable Supportive Housing”<sup>1</sup> presentation at NCSHA’s credit connect conference this year, supportive housing developments cost more to build, cost more to operate, and predictably bring in less revenue. RHLS believes the following approaches will help directly address the realities of these challenges to supportive housing development and promote sustainable projects.

**Section 5.2 (Maximum Basis Per Unit):** PHFA should allow for maximum basis per unit waiver for supportive projects that mirrors the provision for 4% LIHTC applications that consist of the new construction of more than 100 units. Allowing for waiver requests of this type for supportive housing applications directly addresses the increased cost associated with the development and operation of supportive housing.

**Section 4.2.2.4 (Supportive Housing):** RHLS supports the change that permits for fulfillment of the obligation that tenants will pay no more than 30% of income for rent by applicant agreement rather than subsidy commitment at time of application. We strongly support this commitment to affordability for these units and know that a requirement for this sort of rent subsidy commitment at time of application presents a barrier to entry for supportive housing applications. Allowing applicants to agree to this at the time of application and finalize commitment of source post award allows applicants to advance supportive housing development while maintaining a position of flexibility as to the source of this needed rent subsidy. To achieve the benefit of this change, it is critical this be implemented allowing for applicant’s agreement to securing funds at time of application with final subsidy commitment and funding source to be secured prior to closing.

**Advance Race Equity in the LIHTC program through Public Accessibility and Community Engagement:**

RHLS recognizes and appreciates PHFA’s public accessibility and community engagement measures and incentives, including hosting a QAP public hearing and accepting written comments such as these on important plans. However, we are also aware there remains an ‘in the know’ barrier to many development processes, including LIHTC. We believe a few adjustments to data collection and the community engagement process will improve access to this information, expanding the scope of ‘those in the know’ and advance equity through the program. Emerging and BIPOC developers often lack access to LIHTC knowledge assets, informal LIHTC partner networks, and long histories of closing development deals when

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<sup>1</sup> <https://www.ncsha.org/wp-content/uploads/Strategies-for-Sustainable-and-Supportive-Housing-Presentation.pdf>

compared to long standing developers whose leadership are often comprised primarily of white individuals. For this, and many reasons, low barrier access to LIHTC development information is a public good that will support race equity and expand developer access through the LIHTC program.

**Increase transparency in the application process.** PHFA should adopt policies that increase transparency and public participation across the application and allocation process. PHFA can double down on efforts to improve community engagement and public data accessibility throughout the QAP process. To advance this goal, RHLS recommends that:

- All submitted comments be shared publicly, by simply posting all letters such as this and other written communication received in response to request for public comment. The process for publishing this could track other state or federal agencies, such as in the LIHEP program. Ideally the publication of submissions would be accompanied by summary feedback from the Agency as a demonstration of accountability and how public input has been considered.
- When posting draft documents, such as the updated QAP, they should be accompanied by a summary of changes compared to the previous year that includes an in-line redline tracking all changes made compared to the immediate prior version. While it is possible to create these redline documents with PHFA's current draft document publishing practices, this imposes a technological and time barrier, and disadvantages members of the public who lack the knowledge or resources to create these tools individually.
- PHFA should publish preliminary allocation recommendations including scoring information and consider providing a public process for comment. These comments should be considered in the final awards, with PHFA publishing their rationale and point distribution for each application.
- When publishing final LIHTC project award announcements, RHLS requests PHFA including scoring information for all projects. This information is available to individual applicants, but when made easily publicly accessible it will provide important information to all applicants, particularly providing comparison benefits for less experienced program participants.

These measures would allow community members, the developer community, tenants and residents to voice their concerns and suggestions, ensuring their needs are considered. Emerging developers would gain insights to improve future proposals, and PHFA would foster positive relationships with stakeholders through an open decision-making process.

In addition to community participation, transparency, and publicly accessible data, RHLS believes racial equity is advanced through the LIHTC program through prioritization and support of MWVBE interests. RHLS strongly supports PHFA's efforts to expand opportunities for MWVBEs and believes these existing efforts can be strengthened by increasing racial equity tracking and publishing demographic information of project team members by building on

**Section 2.3 and D.2:** RHLS suggests collecting this information and publicly publishing results with the awards list for all development teams not just those seeking scoring in **D.2**.

**Section 4.2.2.7:** We applaud the Agency for identifying and including community participation goals in this section. RHLS would appreciate additional clarity around “projects which, to the greatest extent feasible, involve residents and the surrounding community.” By setting clear and robust standards for what qualifies as community engagement, PHFA could increase awareness in communities by providing a roadmap for engagement and increase certainty for applicants wishing to achieve meaningful community engagement. We believe transparent and publicly posted guidelines for resident and community engagement will expand access to the development process to often excluded groups. We also recommend including prioritization for applications where the developer entered into a Community Benefit Agreement (CBA) with one or more community organizations or coalitions. In addition, we also suggest that these same community participation goals be added to Section 4.2.2.6 Strategic Investment.

**Section 1.2 Ensure the Good Standing Requirement is fair, clear, consistently applied, and includes sufficient notice.** RHLS shares PHFA’s commitment to ensuring project integrity, but the proposed Good Standing Requirement may unfairly disadvantage nonprofit developers, especially emerging ones. The requirement lacks specificity and a clear timeframe for evaluation. We recommend defining a specific review period, such as the past five years, for clarity and to provide predictability that developers can rely on. By establishing a consistent timeframe, PHFA can ensure that all applicants are evaluated equally, creating a level playing field. Nonprofit developers can be assured that they will not be penalized for past issues that fall outside the specified review period, which might no longer be reflective of their current standing or capabilities. Additionally, PHFA should provide notice and an opportunity to cure rather than immediately rejecting applications. Notification within two weeks of application submission should be required, rather than discretionary, as this draft QAP currently proposes. For emerging developers, technical assistance should be offered to help address issues and enhance application quality, ensuring a diverse and competitive applicant pool. Emerging developers often face more challenges in meeting all the application criteria and a notice and cure process ensures that these developers are not immediately disqualified due to minor errors or omissions. This would help level the playing field for all applicants, and by extension, the communities they aim to serve.

**Sect. A.2.a. Clarify that the local community revitalization plan *may but need not necessarily* be sponsored by an official or unit of local government to qualify.** We appreciate this year’s additional waiver of the Maximum Basis per Unit limitations up to 30% for developments affected by local attempts to exclude affordable housing. However, by maintaining the requirement for local approval, such as letters of support or financial contributions, as a condition for receiving Housing Credits sends mixed signals, as developers are encouraged to pursue projects in difficult areas but are also hampered by the need for local government endorsement. Although the QAP states that the Agency may accept a copy of the community

revitalization plan in lieu of a letter from the local government in the event the developer is unable to obtain such a letter, a local support letter effectively functions as a requirement because obtaining a letter of local support is often a critical factor in the evaluation process, without which applications are less likely to succeed. This implicit necessity pressures developers to secure these letters, effectively making them mandatory for competitive consideration. This undermines the intent and continues to disadvantage developers unable to secure such letters. NCSHA, IRS, and the GAO have each published recommendations avoiding incentives for projects demonstrating local support to ensure consistency with fair housing laws.<sup>2</sup> And HUD's Office of Fair Housing and Equal Opportunity has also raised fair housing concerns regarding local approval requirements due to their potential discriminatory influence on affordable housing locations.<sup>3</sup> For these reasons, we urge the Agency to eliminate the local support letter requirement entirely to ensure a fairer process for all applicants. An illustrative example of this approach is the Delaware State Housing Agency's (DSHA) QAP. DSHA broadly defines a "Concerted Community Revitalization Plan" as one which encompasses not only a governmental entity endorsed comprehensive plan, but also plans not official endorsed by a unit of local government such as a community-driven revitalization strategy developed by local nonprofits, neighborhood associations, or grassroots organizations that outlines specific goals and initiatives aimed at improving housing, economic development, and infrastructure within a designated area.<sup>4</sup> This approach allows for the inclusion community-led efforts that might not have had the opportunity to participate in a formal governmental endorsement process. This could be especially beneficial in areas where local governments might be slow to adopt plans, or in communities where revitalization efforts are being led by other entities that are not directly tied to local government. Accordingly, PHFA should clarify that the local community revitalization plan *may* but *need not necessarily* be sponsored by an official or unit of local government to qualify. This will further community equity and align with local approval recommendations from NCSHA, IRS, GAO, and HUD.

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<sup>2</sup> National Council of State Housing Agencies, *Recommended Practices in Housing Credit Administration* (Dec. 2017).

<sup>3</sup> Will Fischer, *Low-Income Housing Tax Credit Could Do More to Expand Opportunity for Poor Families*, Ctr. on Budget & Pol'y Priorities (Aug. 28, 2018), <https://www.cbpp.org/research/housing/low-income-housing-tax-credit-could-do-more-to-expand-opportunity-for-poor-families>.

<sup>4</sup> Delaware State Housing Authority, *2023 Qualified Allocation Plan (2023)*, <https://www.destatehousing.com/wp-content/uploads/2024/02/2023-qap.pdf> ("Concerted Community Revitalization Plan (CCRP) This may include, but is not limited to, a municipal and/or county comprehensive plan, a regional redevelopment plan, a local or neighborhood redevelopment plan or master plan as endorsed and approved by the local government, or a Downtown Development Districts (DDD) plan for a DDD designated by the Governor. The plan must have been adopted or updated in the last 5 years, certified by the agency that developed the plan, and specifically identifies the project as an area of need. Plans not officially endorsed by any unit of local government may also be eligible at DSHA's sole discretion. When evaluating whether a proposed CCRP is eligible, DSHA will consider: The comprehensiveness and specificity of the CCRP, including defined geographic regions, timelines, and identified specific and measurable outcomes; the extent to which the CCRP demonstrates the need for revitalization and is of sufficient size and scope to have a significant and lasting positive impact.").

### **Program Requirements:**

**Section 1.5 9% and 4% Tax Credit Programs.** The Agency is limiting the number of applications any one developer may submit to four 9% and two 4% applications. In the event a developer has not closed on an existing allocation of credits this counts against the number of applications that may be submitted. We recognize the intent behind this rule, however, in many instances the failure to close is a systemic one, and not necessarily the failure of the developer. It may be due to a myriad of reasons including the inability to close in a timely manner with any one or more lenders. We ask that PHFA reconsider this provision especially for the 4% developments as the limit is 2 per applicant.

**Section 3.2.11 Commitment to Upholding Right of First Refusal Agreement.** RHLS strongly supports the inclusion of this section in the QAP, but we also think would benefit from clarification. The goal of protecting affordability is a good one, but the wide reach of this provision may not reach the intended target. One suggestion is to prohibit all ROFR Agreements from including the “*Obligation to obtain a bono fide offer*” to exercise the ROFR.<sup>5</sup> The remedies of the Agency should also be considered. For example, sanctions or penalties on an investor, rather than issuing an 8823 or taking other action that might harm a nonprofit sponsor. We would be happy to discuss this further and explore possible solutions to address this concern. We encourage PHFA to adopt language like that found in the State of Virginia QAP regarding Right of First Refusal Agreements.

### **Climate Resiliency, Environmental Justice and Site Selection:**

**Prioritize climate resiliency and environmental justice by leveraging existing data tools in application assessments.** In developing tax credit development priorities for new construction, the Agency should consider the extent to which certain locations present greater risk of exposure to natural disasters and hazards and the potential impact of such locations on tax credit residents as well as on construction materials and requirements, insurance premiums, development costs, and investor interest. Economically vulnerable communities face a clear and disparate impact resulting from climate change, are disproportionately exposed to pollution from energy generation and industrial energy consumption, and are more susceptible to the financial consequences of extreme weather.<sup>6</sup> To ensure consistent and data-driven analysis of environmental and health factors, PHFA can leverage existing data tools such as the [EPA Environmental Justice Screening and Mapping Tool](#) to evaluate conditions at the census tract level, thereby enhancing the reliability and accuracy of site evaluation. PHFA should consider

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<sup>5</sup> Per *SunAmerica Housing Fund 1050 v Pathway of Pontiac, Inc.*, a bona fide offer is not required for a Section 42(i)(7) right of first refusal. Bona Fide Offers in common law are protections afforded to buyers and sellers to ensure that they are transacting based on a real purchase price rather than a sham purchase/sales price. Those protections are not needed for a Section 42(i)(7) ROFR because the price is predetermined. Therefore, common law does not apply.

<sup>6</sup> See, e.g., U.S. Dept. of the Treasury, “The Impact of Climate Change on American Household Finances,” September 2023, available at [https://home.treasury.gov/system/files/136/Climate\\_Change\\_Household\\_Finances.pdf](https://home.treasury.gov/system/files/136/Climate_Change_Household_Finances.pdf).

adding incentives to A.2 (community revitalization) or C.1 (smart site selection) for developments that demonstrate site selection promoting environmental justice and climate resiliency. Further, in C.2 (Green Certification) or C.3 (Energy Efficiency), we believe there are opportunities to incentivize leveraging federally funded energy efficiency and greenhouse gas reduction programs included in the Inflation Reduction Act (IRA). We encourage PHFA to provide scoring consideration for developments qualifying for and leveraging these resources while they are available.

**Sect. 4.2.2.7 Incentivize projects that incorporate measures that protect existing residents from displacement due to redevelopment.** Studies have shown that while LIHTC is designed to create affordable housing, it can also have unintended displacement effects on existing residents, particularly in gentrifying neighborhoods. For example, by introducing new, high-quality housing, LIHTC developments can attract higher-income residents and increase surrounding property values and, consequently, result in higher rents in the area.<sup>7</sup> For that reason, it's important to that the QAP address these potential displacement effects through incentivizing projects that incorporate anti-displacement mitigation that protect existing residents due to redevelopment. Examples of proven anti-displacement mitigation measures include requiring a commitment for a one-for-one replacement of units lost through redevelopment, incorporating local resident preferences in a development's tenant selection plan, supporting programs providing home repair and weatherization activities to low income households, supporting existing anti-displacement efforts in coordination with local and regional governments, and coordinating with local workforce development and legal aid eviction defense services<sup>8</sup>. With these goals in mind, we request that the Agency review and make public its findings about the impact of its policies encouraging development in "areas of opportunity." This should include the number of developments, locations, number of units, and aggregate information about who resides in the units, including demographic information about residents. We ask that PHFA please publish the "Social Inequities and Local Disparities Certification" so that it may be available for meaningful public review and comment.

Lastly, the drive to increase housing choice should not result in less of a perceived commitment to or denigration of lower-income communities. We noted language in the QAP that could be read as disparaging of low-income communities or could inadvertently be understood as a tool to encourage gentrification. For example, page 36 of the draft includes the following statement: "A critical circumstance is the development's forming an important part of a broader or comprehensive program of neighborhood development which has the capability of *changing fundamentally the character of the neighborhood* or enhancing the lives and amenities available to residents of the community." The italicized portion is language that we understand has been

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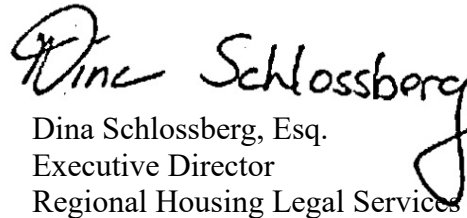
<sup>7</sup> NYU Furman Center's article "*The Effects of the Low-Income Housing Tax Credit (LIHTC)*"; see also "*Crowd Out Effects of Place-Based Subsidized Rental Housing: New Evidence from the LIHTC Program*" by Michael D. Eriksen and Stuart S. Rosenthal.

<sup>8</sup> PolicyLink, *Right to Counsel for Tenants*, <https://www.policylink.org/resources-tools/tools/all-in-cities/housing-anti-displacement/right-to-counsel-for-tenants> (last visited Aug. 18, 2024).

invoked by people who were seeking to gentrify neighborhoods, and by residents describing what it feels like when their neighborhood is undergoing gentrification. We believe that the goal of a comprehensive plan supported by LIHTC investment should not be to change the character of a low-income neighborhood. It should be to stabilize housing needs of existing residents while improving their housing conditions and overall quality of life. Policies in the QAP should avoid unintentionally promoting gentrification and instead focus on mitigating displacement risks through robust neighborhood planning.

Regional Housing Legal Services greatly appreciates Pennsylvania Housing Finance Agency's leadership in promoting affordable housing opportunities throughout the Commonwealth. Thank you for the opportunity to comment on this year's Low Income Housing Tax Credit Qualified Allocation Plan. If you have any questions or would like to discuss any recommendations made here, please do not hesitate to reach out.

Sincerely,

A handwritten signature in black ink that reads "Dina Schlossberg". The signature is written in a cursive style with a large, stylized initial "D".

Dina Schlossberg, Esq.  
Executive Director  
Regional Housing Legal Services