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Donna Duarte
Tennessee Housing Development Agency
502 Deaderick Street, Third Floor
Nashville, TN 37243

Dear Ms. Duarte:

On behalf of the Tennessee Developers Council (TDC), I want to thank the Tennessee Housing Development Agency (THDA) for this opportunity to provide comments on proposed changes to the 2018 QAP. The following comments are given in the order they were proposed.

I. A FORM OF DEVELOPER EXPERIENCE VETTING SHOULD REMAIN IN THE QAP

While developer experience points may not have been helpful in its current form, there is value in ensuring experienced developers carry out Tennessee's tax credit projects.

A. Vetting Developers for Experience Ensures Good Actors and Quality Work within the Program and Greater Accountability

Housing Tax Credit development is complex; allocating credits to an inexperienced developer could waste precious state allocation and cause political damage for a successful program. Relevant affordable housing development should be a threshold for participation but should not be limited to developer experience within the state of Tennessee. Experience and ideas from developers with a track record in other states can be beneficial for THDA. We think the Agency should support allowing developers with relevant experience from outside Tennessee to compete on fair ground – with experience within Tennessee comparing similarly with out-of-state experience.

B. Nearby States All Incentivize or Require Developer Experience and Provide Models to Borrow From.

Kentucky, Virginia, and Georgia, to name a few, all require or incentivize affordable housing experience in some form. Virginia's model shows promise for fairly distributing points amongst developers and creating greater striation amongst points awarded. Virginia also notably awards points strictly for experience on the part of the "Controlling GP", thereby deterring developers to superficially add an experienced developer to their team who will not be a part of the development process in practice. To remain fair to new developers, THDA could also consider limiting new or unknown developers to a single deal until that deal is placed in service, providing THDA a chance to evaluate the developer’s capacity.

II. COUNTY NEEDS SCORE

TDC does not believe that the County Needs Score should be the primary way to create scoring striation because it concentrates applications in just a few jurisdictions even though housing needs exist across the state. The County Needs Score also does not differentiate the varying housing needs across a county. Given the large size of Tennessee Counties, it is not uncommon for there to be dramatic needs in one jurisdiction and limited demand for units in other locations within the County. If a needs score remains in place, THDA might consider refining it to census tract level (as it has proposed to do with the Opportunity Needs Score) which would presumably mitigate this dynamic. Beyond this comment, TDC is reserving further comment until final needs scores are announced later this Spring.

III. THE OPPORTUNITY SCORE PROPOSAL CREATES ISSUES WITH OTHER THDA PRIORITIES

Conceptually, the concept of an opportunity score may serve several positive public policy goals. However, without greater details into the methodology and data sources THDA is using it is difficult to properly assess the proposal. On a basic, methodological level, we would like THDA to present its sources for data – particularly for vacancy rates of market rate units. We are unaware of commercially available statewide databases for market rate apartment vacancy. We are unclear on how THDA can accurately assess many of these data points without conducting a full-scale market analysis.

A. An Opportunity Score Frustrates Cost-Containment Initiatives.

The most desirable locations are also the most expensive to purchase and develop. For that reason, this initiative contrasts with the cost-containment initiative also proposed as a change to the QAP this year.

B. Capture Rates Should be Part of an Opportunity Score Policy

As proposed, the opportunity score will likely drive applications to a limited number of census tracts. Unless additional measures are added to the QAP, we are concerned that THDA will over-concentrate units in certain markets beyond market demand. As best we can tell, the opportunity score is not weighted to consider capture rates within the individual census tracts (and candidly we do not know how it could address this dynamic accurately). THDA will have difficulty evaluating market impact because market studies submitted with applications will be unable to consider other proposed projects in the primary market area likely to be funded. If an opportunity score is adopted, we recommend overhauling the state’s market study process and would also suggest considering limiting allocations to a single project per census tract per round to mitigate this dynamic further.

C. An Opportunity Score has Potential to Aggravate Community Revitalization Efforts

The proposal in its current form fails to recognize needs of communities making significant community revitalization investments in distressed neighborhoods. Revitalization projects, especially those contributing to a Community Revitalization Plan, should be given consideration in the opportunity score. TDC suggests either creating separate opportunity score metrics for revitalization projects (which may be preservation or New Construction) and/or adding additional offsetting points for meeting demonstrable metrics measuring strength of local community revitalization plans and/or community commitment through leverage or other financial contributions. This would ensure more diversity of projects and help ensure that local investments are properly leveraged.

IV. CHANGE RAD SET-ASIDE

TDC is reserving comment on this topic. We may have comments regarding this area after it develops further during the QAP revision process.

V. OPT-OUT PROVISIONS RE HAP CONTRACTS

TDC supports THDA's goal to preserve as many affordable housing projects as possible. Incentivizing developers to waive the right to a Qualified Contract for projects financed with LIHTCs is one of many different approaches the agency may consider to achieving this end. We believe that THDA's proposed language unfairly targets the projects least likely to opt out of the program (given the inherent value of the Section 8 Contract) and should therefore be reconsidered. We do not explicitly support or oppose policy proposals that encourage waiving Qualified Contracts, but advocate that, should THDA pursue this approach, the fairest and most effective approach would be to apply it uniformly across all 9% applications regardless of whether they have HAP Contracts, are a preservation transaction, and/or are new construction projects.

VI. WHILE COST CONTROL MEASURES ARE IMPORTANT, WE FIND THE CURRENT PROPOSAL DOES NOT ACCOUNT FOR MARKET CONDITIONS AND COULD EVEN INCENTIVIZE GREATER SPENDING

Cost containment is an important public policy goal. We concur that exorbitant development costs could potentially hurt the program and potentially be a waste of taxpayer investment. That said, we have not observed exorbitant or unreasonable development costs in Tennessee and believe that THDA's proposed language is excessive, unnecessary and potentially harmful to the program's success in Tennessee.

A. Total Cost Per Unit Caps Are Not Reflective of Market Costs Where Cap Rates Are Historically Low and Cost of Construction Continues to Rise

Given the strength of the local economy, costs for land acquisition and existing affordable multifamily properties have increased substantially over the past several years in Tennessee. This dynamic is amplified in particularly hot markets, which notably overlay with THDA's opportunity areas and high county needs scores. These costs are further amplified for developers intending to produce housing for larger families as higher bedroom count units are more expensive. Added to these costs, are the greater costs of construction caused by THDA's policy desires for high quality product, community amenities, and green features. All of this is to say that simply, these costs cannot be accommodated appropriately under the proposed cost per unit caps. The caps as proposed would result in poor quality construction especially if opportunity scores further drive up acquisition costs. Several solutions exist for overcoming these issues.

We observe that these caps are significantly lower than other states with similar goals. Minnesota, for example, has a $250,000 per unit cap and even that number prohibits the construction of certain desirable, quality projects. At a minimum, we would suggest increasing the caps substantially. One approach THDA might consider is setting caps at 125% of FHA multifamily lending limits for high cost areas. These caps have been vetted by the federal government, are routinely updated, and have a successful track record already. We suggest 125% rather than 100% as the latter is a lending limit and does not include equity in a deal.

B. The Hard Costs to Total Costs Ratio is Unfair and Can Incentivize Greater Spending

It is desirable to reduce soft costs on projects. However, THDA's proposed total cost ratio has significant flaws that may impede the agency's objective and may cause unintended consequences upon enforcement. First, costs during construction can and often do change from the estimated costs at application. This score could change drastically after-the-fact, making it unfair to projects that don't receive an allocation during the application process but would have had a better ratio score after construction is complete. We find difficulty in determining a feasible enforcement method for this issue.

Both the numerator and denominator in this ratio equation are driven by hard costs. Soft costs can be mitigated by increasing hard cost spending which could lead to developers spending more than necessary to increase their ratio score and thus the competitiveness of their application.

Additional soft costs are sometimes desirable from a public policy perspective. For example, THDA can spread their subsidy further when developers leverage additional sources of soft-financing, such as a PILOT, local HOME Loan, etc. However, a consequence of adding additional funds to the capital stack is more legal and accounting fees, which negatively impact the application's ratio. Furthermore, operating and lease-up reserves are desirable soft costs for the initial and ongoing success of a project. Under this scoring system, developers are incentivized to keep legal fees and reserves low and not seek out soft funding.

VII. THE INNOVATION SET-ASIDE SHOULD REMAIN AT ONE PROJECT PER YEAR TO MINIMIZE RISK

TDC supports THDA's proposal to add themes to the Innovation Set-Aside. Furthermore, we agree that removing Scholar House from its current place in the QAP and wrapping it into the Innovation Set-Aside will increase its chances of success. However, we do not support increasing the overall size of the innovation set-aside.

The value of the set-aside should be to test new ideas on a limited basis and evaluate performance over time to ensure they will be successful in concept and implementation. By increasing the size of the innovation set-aside and restricting the projects to a specific theme, THDA is exposed and could be left with three failures rather than one. The purpose for the innovation set-aside should be to try out new and innovative projects to determine if they are a successful and replicable model for the future. If the project is successful and the market shows strong demand for more, perhaps projects of that innovative type could be incentivized in future years through scoring in the QAP's general pool.

VIII. TDC SUPPORTS THE PROPOSED CHANGES AFFECTING RURAL AREAS

IX. TDC SUPPORTS PROPOSED COMPLIANCE REQUIREMENTS CHANGES

X. TDC SEES NO CURRENT ISSUE REGARDING NECESSARY MODIFICATION DUE TO THE THOMAS SYSTEM

XI. TDC ASSUMES "HOUSEKEEPING CHANGES" TO MEAN GENERAL QAP UPDATES SUCH AS DATES AND TAKE NO ISSUE WITH SUCH

XII. TOPICS OUTSIDE OF PROPOSED CHANGES

TDC asks that THDA consider the following issues when drafting the 2018 QAP which were not addressed in the proposed changes:

A. Improve QAP and Bond Program Description Interaction

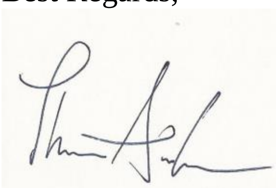
Changes to the QAP can unintentionally and negatively affect the Bond Program Description (BPD). We propose adding a clause to the QAP stating that unless minimum IRS requirements are involved, language in the BPD prevails over conflicting QAP language.

B. Cap the Amount of Bond Financing per Project to 53%

While bonds have typically been a limited resource in states like New York and Massachusetts, they have more recently become a limited resource in many states across the country, including Tennessee. To ensure efficient use of this limited resource, we advise following what states such as New York, Massachusetts, and Minnesota have prescribed: capping the use of bonds per project. 53% provides ample cushion for the 50% and ensures bonds will be efficiently distributed across more projects.

Once again, TDC appreciates the opportunity to provide THDA with this feedback. We would be very happy to discuss any specifics you might have regarding these comments or other subjects of concern. Please feel free to contact me directly with any questions at 202-939-1753 or tamdur@housingonline.com.

Best Regards,



Thom Amdur
Executive Director