FAIR SHARE
HOUSING CENTER

November 23, 2022

Melanie Walter
Executive Director
New Jersey Housing and Mortgage Finance Agency
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Via e-mail

Re: Feedback on the Qualified Allocation Plan (QAP)

Dear Executive Director Walter:

We appreciate your and the Agency's efforts to continue to refine NJ HMFA's QAP to incentivize projects that impact critical housing needs and the opportunity to comment on the draft proposal for the QAP.

The QAP is one of the most important policy documents by the State of New Jersey impacting the development of affordable housing. In Fair Share Housing Center (FSHC)'s two decades of work commenting on the QAP, we have consistently emphasized that location matters in creating affordable homes in New Jersey's cities and suburbs and the competition should incentivize affordable homes in suburban areas that have long excluded affordable homes and urban areas in which affordability is at risk due to gentrification and affordable homes are part of a comprehensive community revitalization plan. We have also emphasized that NJ HMFA needs to look not just at where affordable homes are provided, but also the protections of and amenities available to residents to make sure that the QAP creates high-quality places to live and that affordable homes remain affordable for the long term. And all of this policy must be conscious of the state's deep racial segregation and disparities, from creating opportunities for W/MBE developers to ensuring that homes are marketed and tenants selected fairly.

We see significant improvements in this proposal towards each of these goals, which we appreciate and comment on below. That said, we also see some areas for improvement to help achieve these goals as noted below.

Below are the preliminary comments of FSHC on five key areas of the QAP, followed by more specific comments on specific regulatory provisions; we will supplement these comments whenever there is a formal comment process on a new QAP proposal.

Comments on Key Provisions of the QAP That Impact Multiple Sections

I. Comment on N.J.A.C. 5:80-33.4(d), 5:80-33.5(d), 5:80-33.6(d): FSHC Believes HMFA Should Exercise its Discretion, on an Annual Basis, to Address the 60/40 Split in Accordance with the Allocation of Other State Funding Sources until the End of 2025.

The purpose of the 60/40 split, which has been a basic feature of the QAP for nearly two decades, is to ensure that the QAP funds both much needed housing in suburbs that have historically excluded it and ensure that New Jersey's urban centers invest in affordable housing as part of comprehensive community revitalization. FSHC appreciates the Agency's intent to maintain this policy in a broad sense by recognizing that the $305 million Affordable Housing Production Fund (AHPF) will go predominantly (though not entirely) to suburban municipalities. That said, FSHC is hesitant to support what is likely a two- to three-year reversal of the 60/40 split while new affordable housing funds, particularly the Aspire program, are still developing. The Legislature's targeting of the Aspire funds incentivize projects in Distressed municipalities, with particular incentives for Government Restricted and Enhanced Area municipalities and municipalities with a low Municipal Revitalization Index score, criteria which significantly favor urban municipalities.[1] The Legislature also clearly intends Aspire funds to support affordable housing based on its strengthening of the affordable housing requirements in the program and its specific amendments in 2021 to the program to make 100% affordable housing an eligible use of funds. And the Aspire program is much bigger than the AHPF, with $14 billion in state tax credits available. Overall, if deployed as intended by the Legislature, there well could be significantly more urban funding from the Aspire program than there is suburban funding from AHPF.

FSHC strongly supports the use of Aspire funding for more affordable housing opportunities and sees Aspire as a particularly important tool to address much-needed preservation of existing public and assisted housing, which is disproportionately in urban areas. FSHC understands that this program is predominantly administered by NJ EDA, with NJ HMFA having a role in providing financing for the affordable housing components of the program, and looks forward to continuing to work with both agencies to actively market and support the use of these funds for critical housing needs.

To exercise caution as Aspire program funds began to be awarded, FSHC would suggest with respect to the family, senior, and supportive cycle that each year, from 2023 through 2025, the HMFA board exercises its discretion[2] to assess whether to reverse the 60/40 split or adjust parameters of the range based on where other state funding sources are being utilized.

Furthermore, FSHC respectfully requests that a sentence be added to this section that specifically provides that the reversal of the 60/40 split sunsets no later than the end of 2025, so that if there are unusual and unanticipated situations with some small amount of AHPF funding still being available that does not end up inadvertently change the intended duration of this policy.

II. Comment on the definition in N.J.A.C. 5:80-33.2 of "Targeted Urban Municipalities" or "TUMs" and related references to TUMs

As discussed above, FSHC supports the use of tax credits to incentivize affordable housing development in New Jersey's urban municipalities to primarily address gentrification and comprehensive community revitalization. We believe that the urban/suburban split should focus urban funding on New Jersey's urban centers, and not outlying municipalities that happen to be lower-income or meet other criteria. By

[1] N.J.S.A. 34:1B-242 (as amended in 2021).
[2] N.J.A.C. 5:80-33.4(e)3, N.J.A.C. 5:80-33.5(e)3, N.J.A.C 5:80-33.5(e)3

including municipalities that are not truly urban, those municipalities can sometimes inadvertently use the scoring system to win more points than developments in New Jersey's urban centers, for reasons such as lower cost of construction. Indeed, while the new tiebreaker methodology of favoring municipalities that have not recently won tax credits has significant advantages, about which we provide further comments below, one perhaps unintended consequence is that in the urban cycle it will push developers to seek out deals in smaller municipalities that are defined as urban over large cities such as Newark and Jersey City.

The proposed new definition of urban lowers the threshold to 2,000 housing units or 5,000 persons to represent a compromise between two types of commenters: those concerned about loss of data and rural analysts expressing that the previous 10,000 people or 4,000 housing unit threshold was too high. This new definition does not comport with the goal of TUMs list in the context of the QAP. Rather, we think that the threshold should be increased beyond the previous threshold numbers.

Generally, we support reframing TUMs methodology to hone in on cities that are characteristically urban and experiencing gentrification, rather than those that are smaller poor municipalities that in many cases do not have the locational advantages that larger cities such as Newark and Jersey City have. We fully understand that this is a challenging task: New Jersey's municipalities are complex, and in any definition we believe that there are towns that fall on a continuum between a black letter definition of "urban" and "suburban." That said, by more explicitly framing the goal as allocating credits to the state's urban centers, we believe this list can be improved upon. We would look forward to an opportunity to continue to work with the HMFA to come up with a definition that is more reflective of New Jersey's urban centers, and ensures that urban tax credits reach urban municipalities.

III. Comment on N.J.A.C. 5:80-33.15(a)6 and -33.15(a)21: Successful Development Experience Should be Removed from the Scoring Criteria, or Re-examined to Remove Barriers for MBE/WBE Developers and Partners Seeking Tax Credit Awards.

FSHC supports incentives for including W/MBEs on projects, and we support expanding the eligibility criteria so that professionally diverse partners have a greater stake in affordable housing projects. We support two recommendations made by Monarch Housing that would achieve these goals. First, we support eliminating the point category, at least as currently construed, for "Successful Development Experience" in the scoring section. If HMFA wants to retain this category, we believe W/MBE partners could be assessed under a process similar to the 4% tax credit projects, for example through the commitment letters submitted by construction lenders, permanent lenders and tax credit investors and based on evidence of development experience in other areas, like commercial, market-rate, or affordable projects that have been financed through sources other than the LIHTC, potentially coupled with a team that has worked on LIHTC projects. HMFA could also to the degree it wishes to retain LIHTC-specific experience as a requirement, reduce that requirement to 25% ownership for 1 project. Established – and largely non-W/MBE - developers continuously receive tax credit awards because they meet the existing definition of "Successful Development Experience" and as a result, W/MBE partners have no other option but to reduce their stake in a project in exchange for a partnership. Lowering this threshold would begin to remove obstacles that prevent W/MBE's from receiving project awards themselves. Second, we support adjusting the points for W/MBE involvement in the scoring section to provide more points for higher involvement by W/MBEs instead of just a single score for minimum 20% involvement.

Critically, these two provisions need to work together. If existing developers only have incentives to have 20% W/MBE involvement and that level of involvement never gets to the point where W/MBE developers can get experience points, then those two provisions will continue to maintain barriers to entry for W/MBE developers.

It would also be helpful going forward to provide feedback affirmatively to W/MBEs who are unsuccessful in applying about reasons their application was rejected, or at least to the degree that NJ HMFA already offers such feedback to ensure that applicants who have less experience with the agency know that such information is available.

IV. Comment on N.J.A.C. 5:80-33.19: The New Tiebreaker System, in Tandem with the TUMs Definition, Risks Disproportionately Prevent Urban Municipalities from Receiving Awards in a Tiebreaker.

We strongly support replacing the current tiebreaker rule, which gives preference to higher income areas of the state and penalizes projects that serve a disproportionate number of very low-income people and appreciate NJ HMFA's attention to this issue. That said, we cannot offer support of the proposed tiebreaker rule as currently drafted. While this may be inadvertent, the proposed tiebreaker rule in application would effectively allow smaller suburban municipalities and small towns to beat urban towns in the urban projects competition. This is largely a result of the updated TUMs methodology, which adds 18 new towns to the TUMs list that are mostly not core urban centers. The 18 towns, as they are new to the TUMs list would win in a tiebreaker against many of the towns that have remained on the TUMs list. A new town on this list may not have had a tax credit award as recent as town that has remained on this list; however because these new towns have smaller populations and lower densities, the need for tax credit projects may not be as a great as the need of a larger urban town that is threatened with gentrification due to market-rate investment. We do not think it is good policy to prioritize some of these smaller towns over more tax credits in cities such as Jersey City and Newark especially if it could take years for those larger cities to receive more tax credits.

Perhaps this tiebreaker could be limited to suburban allocations, or modified in some way for urban allocations. Again, we very much appreciate the attention to this important issue and the intent to have a more equitable tie breaker system and would be interested to work with NJ HMFA further on this issue.

V. Comment on N.J.AC. 5:80-33.12(a)15 and N.J.A.C. 5;80-33.32(f)(18): FSHC Supports Additions to the Affirmative Marketing Requirements

The HMFA's proposals to strengthen affirmative marketing requirements will ensure that tax credit units are housing New Jersey's most vulnerable residents fairly. For example, we support requiring owners to notify its local CoC of any units for families that are homeless.

In addition, FSHC supports implementing the lottery requirements from the Housing Resource Center statute in accordance with N.J.S.A. 52:27D-321.6.a through c. We applaud the specific incorporation of the requirements to hold a lottery for affordable homes both on initial occupancy and on vacancies and the transparency of posting on the Housing Resource Center.

With respect to requiring affirmative marketing outreach to be directed at those who are least likely to apply, we believe that this should take into account not just total population but trends, too. For example, if an area already has been experiencing an influx of white people, as is often the case when a neighborhood is gentrifying, affirmative marketing should be directed at Black people or other groups that have not recently been moving to the area.

We also support requiring the ongoing provision of confirmation of compliance with the Housing Resource Center statute in N.J.A.C. 5:80-33.32(f)(18), and would also suggest that this helpful change be expanded support a broader tracking of implementation of affirmative marketing plans, including a requirement for landlords to show how they effectively identified community partners.

Comments on Specific Regulatory Provisions

VI. Comment on the "Redevelopment Project" Definition: FSHC Recommends Removing Language that Requires the Majority of a Property to be Previously Covered by Structures in Non-Smart Growth Areas.

The following language should be removed from the definition for "Redevelopment project:" "In non-smart-growth areas only, the majority (that is, more than 50 percent) of the property must be or have previously been covered by structures, as that term is defined in the Municipal Land Use Law at N.J.S.A. 40:55D-7." This requirement has impeded the construction of 100% affordable projects in more rural areas and is otherwise not a requirement for redevelopment projects.

Alternatively, a project that is part of a court-approved settlement should be treated the same as one in a redevelopment area, as that reflects a court determination that the site is suitable for affordable housing.

VII. Comment on N.J.A.C. 5:80-33.4: Developers Should be Supported in Providing for On-Site After School Care and Other Services for Family, Senior, Supportive Housing Developments.

We support the increased 800,000 exemption level for stand-alone buildings, which can help developers to provide for additional ability for on-site after school care and other services for family developments and supportive services for seniors and people with disabilities.

VIII. Comment on N.J.A.C. 5:80-33.4(a)2: FSHC Recommends Issuing Awards to Preservation Projects with Caution to Ensure 9% Funding is Needed.

Preservation projects should be reviewed thoroughly to make sure that the projects actually need 9% tax credits. Being that 9% credits are the most competitive housing funding source, we believe that in many cases 4% tax credits, either by themselves or partnering with EDA Aspire credits, are more appropriately awarded to preservation projects that may not need the full funding provided by 9% credits. NJ HMFA should ensure that preservation projects applying for 9% credits actually need this level of funding and are not inflating costs to qualify for 9% credits, to ensure that the limited array of preservation projects that really do need 9% funding are actually served. For example, a project that really does not need 9% credits could easily win what is now the second tie-breaker on per unit cost over a more complex preservation project. It may be useful to ask projects applying for this expanded set-aside to affirmatively demonstrate why the project needs 9% credits.

IX. Comment on N.J.A.C. 5:80-33.8(a)1, and N.J.A.C. 5:80-33.13(c): FSHC Supports Increased Caps and Not Having Penalties for Hardship Credits.

With respect to hardship credits, increasing the credit cap to 150,000 per unit is a step in the right direction, though we support an increase to 200,000 to ensure that sufficient funds can be available if necessary, provided that NJ HMFA should analyze the actual necessity of funds on a project specific basis. In addition, we believe that projects should not be penalized for receiving hardship credits, as many of these projects need hardship credits and are not at fault for unforeseen increased costs and interest rates. We believe hardship credits can be part of a comprehensive strategy that includes other pieces NJ HMFA has established such as the $40 million gap funding and potential support to address increased interest rates to ensure that projects that have been stalled come to completion.

X. Comments on <u>N.J.S.A.</u> 5:80-33.9(a): FSHC Supports Extending Deed Restrictions and Updating Bedroom Distribution Requirements for Projects Financed by 4% Tax Credits.

We support longer deed restrictions and bedroom distribution requirements to projects receiving 4% credits, which ensures better use of these critical resources.

XI. Comments on <u>N.J.S.A.</u> 5:80-33.9(b) and <u>N.J.S.A.</u> 5:80-33.12(a): FSHC Supports Disincentivizing Financially Capable Market Rate Developers from Applying for Tax Credits.

We support the changes in section 5:80-33.9(b) and in section 5:80-33.12(a) to HMFA's analysis to disincentivize market rate developers from asking for tax credits when they can independently support projects.

XII. Comment on <u>N.J.S.A.</u> 5:80-33.12a(17)i: FSHC Recommends Defining Community Benefits Agreements with Respect to the Proposed Carve Out for Non-Preservation Projects in a Census Tract Where 30% of the Units are Funded by Tax Credits.

The above provision creates a carve out for non-preservation projects in a Census tract where 30% of the units are funded by tax credits. Community Benefits Agreement is not a defined term within the QAP, and we believe without a definition this could be vaguely interpreted.

XIII. Comment on <u>N.J.S.A.</u> 5:80-33.12(a)19: FSHC Supports Requiring High Speed Internet for Tenants.

We support free high-speed internet for tenants as a requirement for tax credit projects and would encourage NJ HMFA to partner with other agencies to help identify ways for developers to fulfill this requirement at below-market costs.

XIV. Comment on <u>N.J.S.A.</u> 5:80-33.12(a)22: FSHC Supports Additional Requirements Made for Units in the Family Cycle Set-Aside for Families Experiencing Homelessness.

We support the additional requirements made for families experiencing homelessness in the family cycle. In particular, we support registering these units under the HMIS and requiring the bedroom distribution to be one one-bedroom, two two-bedroom, and two-three bedroom.

XV. Comment on <u>N.J.S.A.</u> 5:80-33.12(c)6ix: FSHC Supports Deleting the Reference to Regional Contribution Agreements ("RCAs") from Available Funding Sources.

We support the deletion of RCAs from the sources of funding available to complement tax credits. This a long-overdue recognition of the Legislature's elimination of RCAs in 2008.

XVI. Comment on <u>N.J.A.C.</u> 5:80-33.15(a)1i: FSHC Supports the Proposed Changes to Extended Use and Qualified Contract Process and Recommends Adopting an Extended Use Policy that is Consistent with the Default Policy Under UHAC for both Urban and Suburban Projects.

Increasing the controls period to 45 for extend compliance and implementing waiver of the qualified contract process are good steps forward that we support. In addition, we support the change to 5:80-33.15(a)(1) that extends controls for urban projects to 45 years. This change eliminates a disparity between urban projects, which previously only had 30-year controls, and suburban projects that were already required to extend to 45 years.

With that said, we continue to support adopting an extended use policy that is consistent with the default policy under UHAC of continued affordability unless and until a municipality releases a deed restriction. New Jersey is experiencing a housing crisis, which in part was precipitated by a lack of affordable housing. Protecting units from coming offline would help prevent similar crises in the future.

XVII. Comments on N.J.S.A. 5:80-33.15(a)9iv and 5:80-33.16(b)2v: FSHC Supports Adopting Open Space Points.

We support substituting the community garden incentive for open spaces as a broader option for providing on-site amenities alongside the other positive options in this point category.

XVIII. Comment on N.J.A.C. 5:80-33.15(a)11i: FSHC Recommends Restoring Points for Jobs in the Positive Land Uses Category.

We support restoring the jobs category in prior QAPs, which could be done as another alternative to transit points in the positive land uses category. In prior comments, we noted our findings that 240 municipalities would be able to host a project fully located within a municipality with public and private sector jobs that total at least 95 percent of the housing units. Constructing affordable housing in job rich areas may expand income streams for those in affordable housing and internships for students, leading to better opportunities for those communities.

XIX. Comment on N.J.A.C. 5:80-33.15(a)11ii: FSHC Supports the Positive and Negative Land Use Structure.

We support the positive/negative land use structure. In particular, we think it's important to deeply disincentivize projects within close proximity to landfills, incinerators and prisons. Affordable housing should not only increase the housing stock, but be pleasant. We further support the good options proposed under the positive land uses, such as having projects placed near public schools, religious institutions, restaurants, and day cares.

XX. Comment on N.J.S.A. 5:80-33.15(a)14i: FSHC Supports the Proposed Tiering for Education Points.

We support substituting the NJPARCC testing for NJSLA testing. In addition, we support the multi-point based system for education incentives starting at grade 4 for family housing, as educational access is a critical factor in siting affordable housing.

XXI. Comment on N.J.A.C. 5:80-33.15(a)19 and N.J.A.C. 5:80-33.15(a)(20): FSHC Supports Disincentivizing Partnerships with Entities Responsible for Past Discrimination

We support these provisions that penalize developers with a history of discrimination and not maintaining low-income housing as important incentives to developers to operate their developments in a fair and responsible manner.

XXII. Comment on N.J.S.A. 5:80-33.32(f)17: FSHC Supports Requiring Project Partners to Notify Tenants of Their Rights Under the Violence Against Women Act.

We support HMFA noticing project partners of their own going obligation to provide tenants with the Form HUD-5382, which notifies tenants of their rights under the Violence Against Women Act.

Thank you very much for your consideration of these comments; we would be happy to discuss any of them further with you.

Sincerely,

Adam Gordon, Executive Director
James Williams, Director of Racial Justice Policy
Esmé Devenney, New Jersey Housing Justice Corps Fellow

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