



CT FAIR HOUSING CENTER

September 8, 2010

Timothy Bannon
Executive Director
Connecticut Housing Finance Authority
999 West Street
Rocky Hill, CT 06067

Dear Mr. Bannon:

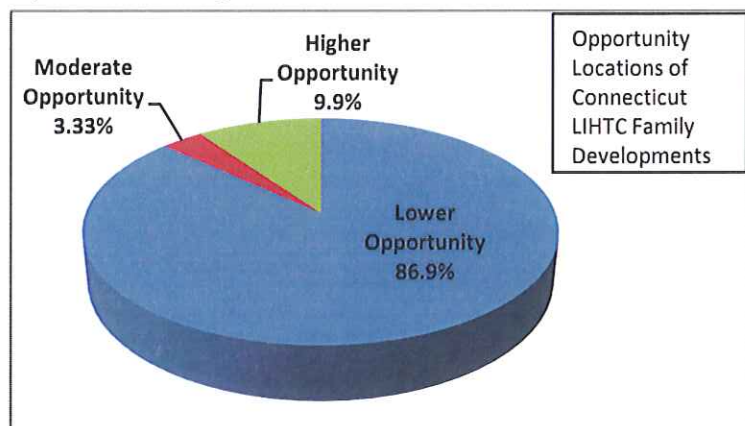
The Connecticut Fair Housing Center was deeply concerned to learn the details of the Low-Income Housing Tax Credit (LIHTC) Program's new draft Qualified Allocation Plan (QAP) completed for the Connecticut Housing Finance Authority (CHFA) by CAS Financial Advisory Services. While we appreciate CHFA's effort to rework the QAP, the agency has been on notice for over a decade that the LIHTC program is being operated in a manner that deepens and reinforces lines of racial and economic segregation. The proposed reformulation of the QAP does virtually nothing to counteract this sad history.

I am writing to (1) inform you of the Connecticut Fair Housing Center's recent analysis of Connecticut LIHTC family development locations; (2) reiterate the fair housing obligations under which the program must operate and (3) recommend a reformulation of the QAP scoring system to bring Connecticut's LIHTC program into compliance with federal and state civil rights laws. I conclude with a series of recommendations on steps CHFA should take beyond rewriting the QAP to restructure the LIHTC program to ensure that tax credit development siting complies with these legal requirements.

Beyond the LIHTC Program, we are concerned that CHFA is not in full compliance with its fair housing obligations under State and Federal law. We would welcome the opportunity to conduct a training for CHFA's Board of Directors, which could include a panel of national fair housing experts, to discuss the full scope of the agency's fair housing duties.

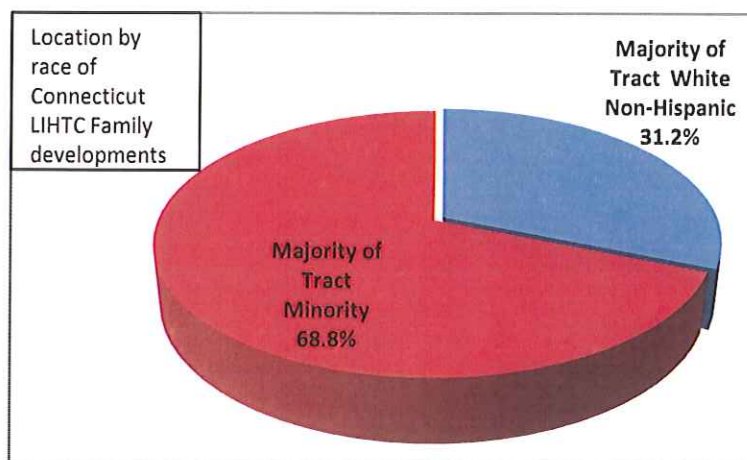
Analysis of LIHTC Development Placement

We have spent the last several months analyzing the location of LIHTC developments using both opportunity data and race indicators. The opportunity data comes from a recent



study the Connecticut Fair Housing Center-commissioned from the Kirwan Institute for the Study of Race and Ethnicity (the “Opportunity Study”)(Executive Summary attached as **Exhibit A**). Our analysis concluded that almost 86.9% of Connecticut’s Low-Income Housing Tax Credit family properties are located in lower opportunity areas – areas with under-resourced schools, high levels of crime and poverty, and poor access to the kind of social networks that lead to jobs.¹ The overwhelming placement of LIHTC developments in these areas is unfair to the children who must live in them and unfair to the children who already attend schools there. A State policy promoting poverty concentration does not benefit children, neighborhoods or the State as a whole. In addition to the negative effects concentrated poverty has been demonstrated to have on neighborhood crime rates and workforce health, concentrated poverty connects directly to a failure to develop the human capital necessary to fuel economic growth.²

The current policy also results in increasing, or at a minimum reinforcing, current stark lines of racial segregation in Connecticut. Our analysis revealed that almost 68.8% of LIHTC family units are located in majority-minority census tracts.³ Since every single one of these tracts is also lower opportunity, the current LIHTC siting policy is having a disparate impact on people of color.



I understand that some members of the CHFA board, with the best of intentions, view the LIHTC program as a means of helping struggling minority neighborhoods, but there is a growing body of evidence suggesting that LIHTCs are not appropriate tools for revitalizing neighborhoods. A 2004 HUD study concluded that,

States should be skeptical about claims that an LIHTC project will revitalize a neighborhood. Reviving distressed neighborhoods and stabilizing neighborhoods in danger of becoming distressed are important policy goals for affordable housing. However, construction of affordable housing is a relatively weak tool to influence that change.⁵³ Therefore, skepticism about claims that a development will serve a

¹ These findings are based on an analysis of LIHTCs allocated or reserved by CHFA through 2009. The full opportunity mapping study, *People, Place and Opportunity: Mapping Communities of Opportunity in Connecticut* is available at <http://kirwaninstitute.org/connect/connecticut-maps.php>.

² See GAO, *Poverty in America: Economic Research Shows Adverse Impacts on Health Status and Other Social Conditions as well as the Economic Growth Rate*, January 2007, pg. 19, available at <http://www.gao.gov/new.items/d07344.pdf>

³ This finding is in line with studies of LIHTC programs elsewhere in the country likewise having a segregating effect and implications for access to opportunity. See Pfeiffer, Deirdre, *Opportunity Illusion Subsidized Housing and Failing Schools in California*, The Civil Rights Project, December 2009, available at <http://www.prrac.org/pdf/california-subsidized-housing-report-2009.pdf>.

neighborhood revitalization purpose should be built into a state's selection process for the LIHTC.⁴

Fair Housing Obligations Applicable to LIHTC Program

As has been outlined in numerous letters to CHFA, including most recently my letter of December 8, 2009 (**attached as Exhibit B**), the Federal Fair Housing Act applies to the Department of Treasury, which administers the LIHTC program, to all state housing finance authorities that administer LIHTCs, and to owners and managers of LIHTC properties as set out in 42 U.S.C. § 3608(d), in Executive Order 12892 (Jan. 17, 1994), and I.R.S. regulation 26 CFR § 1.42-9 (regarding LIHTC development owners' duties).⁵ Other aspects of the Fair Housing Act also apply to CHFA's administration of the LIHTC program and to the agency more generally including 42 U.S.C. § 3604(a), 42 U.S.C. § 3605(a), as well as other federal laws such as 42 U.S.C. §§ 1982 and 1983.

The Federal Fair Housing Act requires CHFA to monitor tax credit properties for discriminatory practices and to affirmatively promote non-discrimination and racial integration in other ways, such as analyzing the racial concentration effects of LIHTC siting and adopting procedures to avoid perpetuating racial segregation in the program.⁶ Connecticut Fair Housing laws likewise apply to the LIHTC program. I am aware of no evidence that the CHFA Board and staff have undertaken the kind of racial analysis outlined above and reformulated the execution of the LIHTC program accordingly.

It was the failure to engage in this kind of analysis and integrate the findings into program policy that resulted in the recent \$62 million settlement against Westchester County for its failure to affirmatively further fair housing.⁷ While the Westchester case involved HUD's Community Development Block Grant Program, the decision makes clear that the duty to affirmatively further fair housing must be taken seriously. The QAP as currently proposed does not affirmatively further fair housing. The recommendations below are designed to bring the QAP into conformance with fair housing requirements and offer additional suggestions of ways to improve Connecticut's LIHTC program. The effect these suggested changes would have on the point structure is outlined in **Exhibit C**, "Recommended Revisions to LIHTC QAP Point Allocations."

⁴ Kadduri, Jill and David Rodda, Abt Associates Inc, *Making the Best Use of Your LIHTC Dollars: A Planning Paper for State Policy Makers*, prepared for the US Department of Housing and Urban Development, July 2004. Available at <http://www.huduser.org/Publications/pdf/LIHTCDollars.pdf>. (Citing Stuart Rosenthal, "Old Homes and Poor Neighborhoods: A Dynamic Model of Neighborhood Decline and Renewal," May 2003, demonstrates how economic and demographic forces affect the evolution of urban neighborhoods over decades-long cycles of decline and renewal. A scan of recent multi-site neighborhood revitalization initiatives suggests that they are often overwhelmed by the imbalance between the challenges of neighborhood conditions and the resources available to address them. Jennifer Turnham and Jessica Bonjorni, "Review of Neighborhood Revitalization Initiatives," Neighborhood Reinvestment Corporation, forthcoming 2004.)

⁶ See *Shannon v. HUD*, 436 F.2d 809 (3d Cir. 1970).

⁷ See *United State ex rel. Anti-Discrimination Center v. Westchester County*, Case No. 06-cv-2860, U.S. District Court for the Southern District of New York (Settled August 2009).

Itemized Comments on the 2011 Draft Qualified Allocation Plan

1. **QAP Draft does not structure threshold requirements in a manner that affirmatively furthers fair housing.** We recommend that the threshold requirements for all Low-Income Housing Tax Credits be as follows:

No development should receive tax credits unless it:

- a. Serves to reduce segregation and
- b. Is located either
 - i. Outside low and very low opportunity neighborhoods or
 - ii. In a Qualified Census Tract and contributes to a concerted community revitalization plan.

The definition of “a concerted community revitalization plan” must be carefully considered. Allan Mallach, a senior fellow at the National Housing Institute and a national expert on housing and planning, proposes two requirements be met to constitute a genuine “concerted community revitalization plan”:

1. “Strategies should be based on a comprehensive revitalization plan, developed through a process that engaged neighborhood residents and other stakeholders; (cite omitted)” and
2. “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.”⁸

We recommend that these criteria be applied to any “concerted community revitalization plans” used to justify placement of LIHTC developments in Qualified Census tracts.⁹

RECOMMENDATION: New threshold location requirements that each LIHTC development must (a) serve to reduce segregation and (b) be located (i) outside lower opportunity tracts or (ii) in a qualified census tract and is part of a concerted community revitalization plan (as defined by Alan Mallach).

2. **Tax credits should only be used to revitalize public housing under special circumstances.** While we recognize the serious need for public housing rehabilitation, the Public Housing revitalization classification category is of deep concern because the majority of public housing is located in lower opportunity racially segregated areas and thus, unless it is carefully structured, the tax credit project’s rehabilitating public housing

⁸ Mallach, Alan, *Toward a Policy Framework for the Allocation of the Low Income Housing Tax Credits*, prepared for a meeting on Fair Housing Law and the LIHTC Program, May 6, 2003, available at http://www.njisj.org/reports/framework_report.html.

⁹ Myron Orfield also discusses the interplay of the definition of “concerted community revitalization plan” and fair housing obligations, see Orfield, Myron, *Racial Integration and Community Revitalization: Applying the Fair Housing Act to the Low Income Housing Tax Credit*, *Vanderbilt Law Review*, Nov. 2005, pg. 1796, available at <http://www.allbusiness.com/legal/3604595-1.html>.

will simply result in perpetuating segregation. As one expert concluded upon reviewing the great body of studies on the topic of public housing location, “Although segregation has manifested itself in many ways, the fundamental observation is that segregated public housing for blacks is almost universal in the nation’s largest cities. (citation omitted).”¹⁰

Instead of constituting a separate class of grants, we propose that public housing revitalization remain a priority for proposed developments that meet the threshold requirements proposed above. We recommend that 4 points be allocated to applications that propose to rehabilitate public housing. Combined with the 6 points available for preserving at risk housing, a total of 10 points should be sufficient to encourage applications proposing appropriate public housing revitalization which promote desegregation and (1) are located in higher opportunity areas or (2) are part of a concerted community revitalization plan.

RECOMMENDATION: Apply new threshold requirements to public housing rehabilitation projects and allocate 4 points to applicants proposing such projects if the threshold requirements are met.

3. **QAP Draft does not fully recognize the extent to which Qualified Census Tracts do not need to be a priority within the LIHTC program.** Specifically, Section III.B. of the Draft QAP, which states a preference for LIHTC project placement in qualified census tract, fails to fully quote the section of the 26 USC § 42 (m)(1)(B) stating that the qualified allocation plan is a “plan which sets forth selection criteria to be used to determine housing priorities of the housing credit agency which are *appropriate to local conditions*” (emphasis added). In a state as segregated as Connecticut with a LIHTC program that has served to reinforce lines of segregation, criteria that affirmatively furthers fair housing is even more imperative than it is under normal circumstances. Quite apart from that, fair housing considerations override recommended statutory preferences for placements in qualified census tracts.¹¹ The federal government did not craft this program to perpetuate segregation.

RECOMMENDATION: If such placements will perpetuate segregation, the Fair Housing Act and local conditions override LIHTC statutory language suggesting preference may be given to projects located in qualified census tracts.

4. **The Draft QAP is not consistent with the 2010-2015 Consolidated Plan (currently under review by HUD) and Connecticut’s Plan for Conservation and Development.** The draft QAP states that the National Affordable Housing Act of 1990 requires that LIHTC be allocated in a manner consistent with the State of Connecticut Consolidated Plan for Housing and Community Development and the Annual Action Plan. The Opportunity Report that the Connecticut Fair Housing Center commissioned from the Kirwan Institute for the Study of Race and Ethnicity is a foundational document for the Consolidated Plan and is cited numerous times throughout the document. One of the

¹⁰ Chandler, Mittie Olion, *Public Housing Segregation: What are the Options?* Housing Policy Debate, Volume 3, Issue 3 (1992), available at <http://content.knowledgeplex.org/kp2/img/cache/kp/1329.pdf>.

¹¹ Orfield, Myron, *Racial Integration and Community Revitalization: Applying the Fair Housing Act to the Low Income Housing Tax Credit*, supra., pg. 1790 (setting forth the legal argument for the priority of fair housing laws).

conclusions of the Opportunity Report embedded in the Consolidated Plan is that more affordable housing must be placed in higher opportunity neighborhoods. The Plan for Conservation and Development echoes these themes. There is virtually nothing in the Draft QAP that directs allocations in this way. If implemented in its current form, the Draft QAP will not increase higher opportunity placements and is therefore *inconsistent* with the Consolidated Plan and the Plan for Conservation and Development.

a. The Draft QAP fails to meet the first objective of the Consolidated Plan.

Apparently in an effort to be succinct the Draft QAP fails to capture key opportunity and equity elements of the Consolidated Plan's first objective. The Consolidated Plan's first objective stated in full is as follows:

Make housing investments that support responsible growth and development in the state and the efficient use of existing infrastructure investments in transportation, water, sewer and utility systems.

- Growth Management Principles of Connecticut Conservation and Development Policies Plan (C&D Plan) calls for revitalizing regional centers, *expanding housing opportunity and choice*, as well as concentrating investments that support both development and transportation.
- C&D Plan also calls for promoting *"housing mobility and choice across income levels utilizing current infrastructure and the preservation of existing residential neighborhoods and housing stock"*.

(emphasis added). If executed under the Draft QAP, the LIHTC Program will not assist Connecticut with meeting the first goal because it creates no real incentives to use LIHTCs within higher opportunity areas.

b. The Draft QAP likewise fails to comport with the third objective of the Consolidated Plan. Objective three of the Consolidated Plan is to "Preserve and increase the supply of affordable housing that expands housing choice and opportunity." With no serious incentives or programmatic requirements that housing be placed in higher opportunity areas, the Draft QAP assures that LIHTC developments – particularly family developments – will be placed only in lower opportunity segregated areas.

RECOMMENDATION: Change the threshold criteria and point structure (see Recommendation #1 and below) to reward higher opportunity placement of LIHTC developments to make the QAP consistent with State plans.

5. **Virtually none of the Allocation Priorities would encourage the development of desegregated higher opportunity housing and several are likely to promote segregated housing.**

a. Affordability:

- i. **Mixed-Income:** Encouraging mixed-income developments is critical for a number of reasons. Such developments can contribute to desegregation. They can prevent small-scale poverty concentration which is a particular concern in larger developments. A mixed-income approach can also make developments more palatable to communities that might otherwise be resistant to LIHTC projects. We recommend attributing sufficient points to this measure to ensure that it is a true priority for applicants.

RECOMMENDATION: We recommend awarding 3 points to higher opportunity developments and 10 points to QCT/concerted community plan developments that commit to include at least 20% of non-targeted units in their LIHTC projects.

- ii. **Length in Service:** We recommend that additional points be awarded for higher opportunity developments that make the commitment to a longer term of affordability because the goal is to reshape affordable housing location for the long term.

RECOMMENDATION: We suggest that higher opportunity developments making an affordability commitment of equal to or greater than 50 years receive 4 points and those making a commitment of between 40 and 49 years receive 2 points.

- b. **Supportive Housing and Enrichment:** While the Connecticut Fair Housing Center recognizes the critical importance of supportive housing, we encourage CHFA to assess whether giving such an overwhelming advantage to supportive housing proposals (15% of the points awarded) would have the tendency to segregate supportive housing into lower opportunity areas and unfairly disadvantage proposed developments serving families with children.

Like other forms of affordable housing, supportive housing should be placed in higher opportunity areas. Across the country there is pattern of “ghettoized” supportive housing that is likely replicated in Connecticut. Higher opportunity areas are in a better position to provide for a supportive housing population than our struggling cities. Without changing the threshold requirements, supportive LIHTC developments will likely be located within lower opportunity areas.

Supportive housing often serves single individuals or people who are elderly. We are concerned that the award of 15 points for supportive housing projects could result in less housing for families with children – including families with children who need supportive housing. One possible way to balance these interests is to create a complimentary point award for projects that include two or more

bedrooms to ensure that the needs of families with children are met, including families who need supportive housing.

RECOMMENDATION: Award 7 points for supportive housing and create a new category awarding 7 points for projects in which all units have two or more bedrooms.

- c. **Preservation:** The issue of permanent displacement presents a dilemma for fair housing advocates who are concerned both about ensuring housing for those who need it most and guaranteeing that public housing residents are given true choice about where they live. We encourage CHFA to think creatively about ways to accomplish both goals.

One approach that might meet both these two challenges would be to create a “Choices” dual award program that would allocate tax credits for two projects simultaneously – one in a higher opportunity area and one, a rehabilitation, in a lower opportunity – which would work in tandem. A greater number of market-rate units would be created in the lower-opportunity area and a greater number of targeted units would be created in the higher opportunity area, but in the end there would be no net loss of units and residents could opt to live in either development.

Another strategy is to work closely with the administrators of the Housing Choice Voucher program and the Rental Assistance Program and mobility counseling agencies to give residents information on other housing options. Any resident who finds higher opportunity housing through this effort would not be considered “displaced” for the purposes of the QAP.

RECOMMENDATION: Include in the award of zero displacement points allowance for residents who are offered and accept housing in higher opportunity areas. Increase points awarded to 4 points. Explore other ways to achieve zero displacement and meet fair housing goals.

- d. **Sponsorship Characteristics:** Awarding 7 points to general partners who have successfully developed other LIHTC projects – especially Connecticut projects – will have the impact of disadvantaging highly qualified developers, some of whom may have successfully developed non-LIHTC affordable housing in higher opportunity areas – including out-of-state. Many current developers of LIHTC projects only have experience developing urban low-opportunity projects and while their experience should be rewarded, we must also take into account that developing in higher opportunity areas potentially requires different approaches to zoning and local politics. The same holds true for managers. Favoring Connecticut businesses might likewise disadvantage excellent developers and managers from applying. Any past experience CHFA has had with the developer, both in its development and management, including fair housing monitoring, should also come into play and CHFA should be permitted to deduct points accordingly.

RECOMMENDATION: Award 5 points for general development experience; 2 points for general management experience; 2 points for low-income unit development experience; 1 point for higher opportunity development experience and one 1 point for Women or Minority Ownership; and up to 3 points available to be deducted by CHFA based on developer's track record with CHFA.

- e. **Responsible Growth:** We recommend that the title of this section be changed to "Responsible and Equitable Growth." A few comments are below.
 - i. **High rent/low income:** We would recommend removing this measure and awarding more points to "Communities with comparatively less rental housing" (see ii. below).
 - ii. **Communities with comparatively less rental housing:** This is one of the few indicators in the draft QAP that would increase the likelihood of LIHTC developments being placed in higher opportunity areas. If higher opportunity location is not used as a threshold requirement, we would recommend that this be given 10 points.
 - iii. **Thriving Schools (NEW):** We suggest that an emphasis be placed on proposed developments that will be placed in thriving school districts and thus a new category should be created that would give 3 points to projects proposed for lower opportunity census tracts in areas served by a public high school with a graduation rate of over 90%. Because the higher opportunity census tracts contain thriving schools by definition, additional points for thriving schools are not necessary for that category.
 - iv. **Transit Oriented Development:** It is impossible to judge this feature without having access to the Glossary defining "activity center". One concern about a transit-oriented development (TOD) standard is that public transportation in Connecticut is so underdeveloped that awarding too many TOD points could hurt the chances of an excellent project in an already-developed higher opportunity neighborhood. It is also unclear whether this feature takes planned public transit expansion into account. For this reason we recommend reducing the points allocated to this feature to 1 point.
 - v. **Robust Affirmative Marketing:** We recommend adding an additional measure to assess the developer's commitment to carry out a robust affirmative marketing strategy. One concrete way to measure this is to award 5 points to any high opportunity development that agrees to advertise openings with Housing Choice Voucher administrators and House Authorities two days in advance of any public announcement.
- f. **Financing Characteristics:** We are concerned that the point structure for this section will disadvantage multi-bedroom developments and developments that are opposed by the municipality.
 - i. **Credits Per Unit:** A "credits per unit" point system creates a disincentive for developing LIHTC projects with the more costly multi-bedroom units

which are more costly essential for accommodating families. This point system should be changed to an assessment of credit *per bedroom*.

- ii. **Cost Effectiveness, Intermediary Costs & Hard Costs:** We are concerned that the points awarded for cost effectiveness will disadvantage developments in higher opportunity areas with greater costs. To counteract this, we suggest an award of bonus points (see below).
- iii. **Higher Opportunity Bonus Points:** Because development in higher opportunity areas tends to be more expensive, we recommend a 3 point bonus be automatically applied to any higher opportunity development.
- iv. **Municipal Resources:** A municipality that is opposed to the development of affordable housing is not likely to support the endeavor financially, so this point should be removed.

RECOMMENDATION: Change credits per unit to a per-bedroom measure, add a 3 point bonus for higher opportunity area proposals, and remove the point for the contribution of municipal resources.

- 6. **Readiness:** We would recommend that any aspects of the “Readiness” priority that are contingent upon local approval be removed as an indicator because local governments are often the biggest stumbling blocks for developers trying to create affordable housing in high opportunity areas. The point awarded for obtaining all relevant permitting should be removed. If local cooperation makes it more likely that an applicant will meet the 40% plan specification or equity investor preliminary commitment requirements, those should be changed so that local politics will not interfere with the award of tax credits. Please see recommendations below for ways in which CHFA could manage this program in a way that makes allowances for delays created by zoning disputes.

RECOMMENDATION: Remove any requirements linked to local approval from the point system and remove the 1 point gained for obtaining permitting.

7. Tax Credit Compliance Monitoring

- a. Under Connecticut General Statute § 8-37bb CHFA is obligated to provide reports on the racial demographics of the people served by its programs, so collecting this information should be required as part of the compliance portion of the QAP.
- b. Under Connecticut General Statute § 8-37ee entities applying for any number of programs, including LIHTC program, must submit an affirmative fair housing marketing plan. This obligation should be listed among the records retained by the applicant.

RECOMMENDATION: Include the reporting of racial demographics and the submission of affirmative fair housing marketing plan in the list of items under “monitoring.”

Creating a Hospitable Climate for High Opportunity Development

Beyond reformulating the QAP, CHFA should take the following steps to create a more hospitable climate for higher opportunity development:

- **Flexible Financing.** The zoning obstacles facing developers who want to develop LIHTC buildings in higher opportunity areas can be enormous and create a considerable disincentive to development in those communities. We recommend that as much flexibility as possible be given to developers of LIHTC projects in higher opportunity areas to allow them to contend with the additional barriers they may face when trying to develop in these areas.
- **Gap Financing.** Some percentage of available gap financing, such as state HOME funds or CHFA reserves or, when state finances improve, new state funding, should be dedicated to making LIHTC developments in higher opportunity areas a reality.
- **Flexible Cost Standards.** CHFA might also consider flexible cost standards to reflect higher costs in higher opportunity areas and an increased developer fee to compensate for the greater zoning and permitting difficulties involved in these areas.

CHFA should also consider the range of creative and thoughtful suggestions, many of which are taken directly from the QAPs of other states, outlined in *Civil Rights Best Practices in the Low-Income Housing Tax Credit Program* by the Lawyers' Committee on Civil Rights and the Poverty and Race Research Action Council, attached as **Exhibit D**.¹²

By failing to consider and act upon its fair housing obligations, the CHFA Board is leaving the agency open to considerable legal liability. CHFA is risking liability under of Title VIII of the 1968 Civil Rights Act, Title VI of the 1964 Civil Rights Act and State statutes such as Connecticut General Statute § 8-37cc and potentially others. I urge the CHFA board to seriously consider the recommendations outlined above. The Connecticut Fair Housing Center welcomes the opportunity to work with CHFA to ensure that it is in compliance with its fair housing obligations.

Sincerely,



Erin Boggs, Esq.
Deputy Director

cc: Board of the Connecticut Housing Finance Authority

¹² This report is also available at <http://www.prrac.org/pdf/2008-Best-Practices-final.pdf>.