Metropolitan St. Louis Equal Housing and Opportunity Council
*Working to ensure equal access to housing and places of public accommodation for all people*

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Kip Stetzler, Executive Director
Missouri Housing Development Commission
920 Main Street, Suite 1400
Kansas City, MO 64105

**RE: 2016 Draft Qualified Allocation Plan**

Dear Mr. Stetzler:

On behalf of the Metropolitan St. Louis Equal Housing and Opportunity Council (EHOC), the Lawyers' Committee for Civil Rights Under Law (Lawyers' Committee), and the Poverty and Race Research Action Council (PRRAC), thank you for the opportunity to submit written comments on the Missouri Housing Development Commission's (MHDC) Draft 2016 Qualified Allocation Plan (QAP). As fair housing and civil rights organizations, we commend the MHDC's initiative in considering policy options that could leverage the Low Income Housing Tax Credit (LIHTC) program to foster residential racial integration and increase meaningful access to opportunity. Implementing effective policies for promoting integration is an essential component of compliance with the MHDC's duty to affirmatively further fair housing under the Fair Housing Act and the Housing and Community Development Act of 1974. This letter presents recommendations for ensuring that changes to the QAP increase fair housing choice and do not have adverse unintended consequences.

The MHDC's attention to issues of spatial concentration in the distribution of LIHTC units is timely in light of the increased focus on the role of federal, state, and local housing policies in contributing to the events in Ferguson. Among all LIHTC properties in the St. Louis metropolitan area, 72% are in low and moderate-income Census Tracts, and 62% of properties are in Census Tracts that are majority African American. In St. Louis County alone, over the past five years, seven out of ten developments that have received 9% tax credits in St. Louis County have been in heavily African American North County while two have been in predominantly white, working class South County. The MHDC has awarded 9% tax credits to just one senior development in Mid County and West County, the highest opportunity areas within the region. Clearly, this is a state of affairs that calls for prompt and decisive action.

## I. Incentivizing LIHTC Development in High Opportunity Areas

One of the most important steps that the MHDC can take to foster residential racial integration and reduce concentrated poverty through its policies is to incentivize the development of LIHTC properties in high opportunity areas that feature low poverty rates, high-performing schools, access to employment, and other amenities. Incentives for development in high opportunity areas are a critical tool for overcoming the presumption that building affordable housing in areas of high poverty and African American and Latino population concentration is the path of least resistance for developers. On page 18 of the QAP, the MHDC has included a preference in funding for proposed developments with locations that meet certain criteria for high opportunity areas. The inclusion of a holistic set of indicators of opportunity in addition to a threshold requirement for poverty rate is an important safeguard for ensuring that developments that qualify for the preference are in genuinely high opportunity areas, and do not have the effect of increasing racial and economic segregation in the region. We applaud MHDC's efforts in designating this preference for developments in high-opportunity areas in the QAP. However, there are additional steps necessary to ensure that the process fulfills the intended goal and truly promotes housing developments in areas with high opportunity.

a. *Recommendation: Establish Separate Competitive Pools for LIHTC Developments in High Opportunity Areas in Each Region of the State.*

Since the MHDC does not use a point-based system for allocating tax credits and has not proposed a specific percentage set-aside for developments in high opportunity areas, it is difficult to determine how much of an advantage such developments will receive in the application process. In order to increase developer confidence that proposals in high opportunity areas will be truly competitive, the MHDC should adopt an objective framework for administering the preference. Specifically, the MHDC should look to the example of states like New Jersey and create separate competitive pools in each of the state's three regions for developments in high opportunity areas. If any credits in the high opportunity pools go unused, they should revert to the broader regional pools. In the event that the credits revert, however, the MHDC should conduct outreach to developers prior to the next allocation round in order to increase their comfort level with building in high opportunity areas.

b. *Recommendation: Limit Eligibility for the High Opportunity Preference to Family LIHTC Developments.*

As currently phrased, the MHDC's preference for development in high opportunity areas would apply to both senior and family housing. But proposals to develop LIHTC properties for seniors in high opportunity, less segregated areas in the St. Louis metropolitan area have been much more successful than attempts to develop family housing. For example, just three out of 19 senior developments in the region to which the MHDC awarded 9% tax credits have been in majority African American Census Tracts. In light of the MHDC's success in locating senior LIHTC developments in high opportunity areas with less segregation, the preference for developments in high opportunity areas should only be available for family developments.

c. *Recommendation: Provide a 30% Basis Boost for Developments in High Opportunity Areas.*

The QAP provides that several types of developments that receive preferences also receive a 30% boost in eligible basis, but developments in high opportunity areas would not receive that basis boost. Although basis boosts do not provide proposed developments with a competitive advantage in the application process, they are powerful incentives for developers and make developments in higher cost areas more feasible. In order to stimulate developer interest and ensure the early success of the preference for developments in high opportunity areas, the MHDC should use its authority to provide a basis boost to projects in high opportunity areas.

*d. Recommendation: Release the Draft Market Study Guidelines and Incorporate Quantitative Measures of Opportunity into the Definition of High Opportunity Areas.*

The QAP broadly states which dimensions of opportunity are factors in defining high opportunity areas but only provides a clear, objective threshold for neighborhood exposure to poverty. The task of defining high performing schools, access to employment, and access to transit is deferred to the Market Study Guidelines; however, the MHDC has not published the draft guidelines for the Fiscal Year 2016 allocation round. Accordingly, it is difficult to comment on how the MHDC has defined those terms. The MHDC should release the Draft Market Study Guidelines for public comment in order to ensure that the process of developing the preference for developments in high opportunity areas is transparent and results in provisions that are informed by stakeholder input. Furthermore, in defining each aspect of opportunity, the MHDC should use clear quantitative criteria that set a high but attainable bar for developers seeking the preference.[1]

## II. Avoiding Excessive Concentrations of LIHTC Units and Developments

The QAP proposes three new restrictions on the location of LIHTC developments that are designed to avoid excessive concentrations of poverty, in general, and subsidized housing, in particular. On page 18, the QAP states that developments shall not be located in Census Tracts where subsidized housing comprises more than 20% of all units and that, in the state's two major metropolitan areas, developments shall not be located within a one-mile radius of a subsidized development that was approved in the last two years and that is less than 90% leased-up. Additionally, on page 17, the QAP limits the maximum development size to 50 units. We support these valuable concepts in the QAP, and suggest the following recommendations to strengthen this provision:

*a. Recommendation: Retain the Restriction on the Concentration of Subsidized Units in Specific Census Tracts and the Development Spacing Requirement.*

To the extent that exceptions do not erode their efficacy, both of the concentration restrictions on Page 18 are important strategies for ensuring that LIHTC development is integrated throughout metropolitan areas. The proposed thresholds of 20% and one mile respectively appear to be reasonable. After each allocation round, the MHDC should analyze the location of proposed developments that receive tax credit awards to determine whether any adjustments to those thresholds are any necessary. If, for example, many developments in Census Tracts in which

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[1] For a review of opportunity-based siting metrics, see "Opportunity and Location in Federally Subsidized Housing Programs: A New Look at HUD's Site & Neighborhood Standard As Applied to the Low Income Housing Tax Credit" (PRRAC, Kirwan Institute and the Opportunity Agenda, 2011), available at www.prrac.org/pdf/OpportunityandLocationOctober2011.pdf

between 15% and 20% of units are subsidized or many developments that are between one and two miles from another recently approved development receive tax credit allocations, it may be appropriate to adopt more aggressive restrictions on unit and development concentration.

b. *Recommendation: Remove or Substantially Increase the Development Size Restriction.*

By contrast, while development size is one dimension of concentration, the QAP's presumptive limit on development size of 50 units is not necessary in light of the MHDC's recent allocation patterns. Of the 35 developments that received tax credits from the MHDC over the last five allocation cycles, just four had 100 or more units, and only seven had between 50 and 100 units. These relatively larger developments were not disproportionately located in high poverty areas. In other words, this restriction, unlike the others, is not tailored to address an existing shortcoming in the MHDC's policies and practices. Additionally, the implementation of the cap could have unintended consequences as economies of scale may be necessary to make certain development proposals in high opportunity areas viable. In light of the prevalence of restrictive zoning in many high opportunity areas within Missouri's metropolitan areas, relying on a greater number of smaller developments may result in the underutilization of the preference for high opportunity areas. The possibility of receiving a discretionary exception from the cap from the MHDC may not inspire sufficient confidence in developers to cause them to go forward with plans for larger projects.

c. *Recommendation: Make the List of Exceptions to Concentration Restrictions Exclusive and Delineate Limited Circumstances under which Exceptions May Be Made for Preservation or Rehabilitation Developments.*

All three of these restrictions are subject to exceptions. For the maximum development size, the MHDC would reserve the discretion to authorize exceptions and provides examples of types of developments that may receive exceptions, including rehabilitation projects, mixed-income projects, and projects applying under one or more of the QAP's priority areas. For the spatial restrictions, exceptions, which are also discretionary, may include developments in which 25% of units are set aside as special needs housing, preservation or rehabilitation projects, and projects replacing existing subsidized housing.

The degree of discretion that would be retained by the MHDC in deciding whether to grant exceptions to these requirements is concerning, and the non-exclusive nature of the list of grounds for exceptions could swallow the restrictions whole. Additionally, of the listed grounds for exceptions, only mixed-income developments and developments in high opportunity areas (to the extent that they qualify for the preference) present rationales for exceptions that are consistent with fair housing goals. Preservation projects may advance fair housing goals in limited circumstances in neighborhoods that are undergoing rapid demographic shifts, but the QAP does not provide for any such limitation.

*d. Establish a Clear Exception for Neighborhoods Experiencing Rapid Gentrification.*

MHDC should add an exception in the QAP for developments that preserve affordable housing in neighborhoods experiencing rapid gentrification. A clear exception made for rapidly gentrifying areas is consistent with fair housing goals that promote racially and economically diverse neighborhoods. This exception to the deconcentration provisions in the QAP must be based on census data that clearly demonstrates a rapid shift in demographics that threatens the affordability and racial diversity of that neighborhood.

## III. Requiring Strong Affirmative Marketing Provisions

It is not enough to locate affordable rental housing in non-segregated, high opportunity areas. For such developments to be successful in breaking down entrenched patters of segregation, it is crucial to affirmatively reach out to families with children who have been living in the most concentrated and segregated neighborhoods in the metropolitan area. The QAP should also exclude developments with potentially discriminatory tenant selection criteria, such as local residency preferences.[2]

Another important aspect of affirmative marketing is strong outreach to existing Housing Choice Voucher families. The LIHTC statute prohibits discrimination against Housing Choice Voucher families, and the Missouri QAP should reflect this, and require additional outreach and marketing to voucher families living in higher poverty areas throughout the state.

## IV. Defusing Sources of Neighborhood Opposition

*a. Recommendation: Do Not Include Local Law Enforcement Officials on the List of Public Officials that Must be Notified of LIHTC Applications.*

The QAP provides, consistent with statutory requirements, that developers must notify local public officials of their applications. In MHDC's summary of proposed changes, the Commission has stated that it plans to add the head of local law enforcement to the list of officials that must be notified. Federal law does not require the notification of local law enforcement, and including chiefs of police and sheriffs in the process would be counterproductive. There is no empirical basis for the concern that LIHTC development contributes to crime. By including the notification requirement, the MHDC would risk perpetuating the misconception that there is such a relationship thus stigmatizing affordable housing development. Both the added stigma and the increased opportunity that law enforcement officials would have to opine on development proposals could lead to good proposals, especially in high opportunity areas, being torpedoed by Not In My Backyard opponents. The MHDC should not risk this potential outcome.

[2] For guidance on best practices in affirmative marketing, see Accessing Opportunity: Recommendations for Marketing and Tenant Selection in LIHTC and Other Housing Programs (December 2012), available at www.prrac.org/pdf/affirmativemarketing.pdf.

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As the nation's largest affordable housing development program, LIHTC has enormous untapped potential as a vehicle for expanding access to opportunity. The reforms proposed by the MHDC in its draft QAP provide a constructive starting point for dialogue about how to begin to realize that promise. If adopted, the recommendations in this letter would significantly increase the likelihood that the MHDC's efforts are effective.

If you have any questions about these recommendations, please do not hesitate to contact Elisabeth Risch at 314-534-5800 or erisch@ehoc-stl.org.

Sincerely,

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