

**AFFORDABLE HOUSING COALITION OF SOUTH CAROLINA
2020 SCSHFDA QUALIFIED ALLOCATION PLAN (QAP) CONCERNS**

1) Denying Applicants The Opportunity To Seek Available Remedies If They Believe That The Administration Of The Program Has Been Compromised

It is concerning for SC Housing staff to be allowed unbridled administrative discretion with limited overview or judicial remedy for its decisions. The fact that the Authority staff can announce, change, and even waive rules it promulgates as it sees fit, in its sole discretion and on a case-by-case basis seems to violate every basic intent of the administrative due process allowed under the law and undermines the integrity of the QAP.

How can the Authority expect the development community to invest significant money, time and effort in making applications in a process where there is no course of legal remedy for negligence? This language would be unenforceable if challenged in court and therefore should be removed. A large amount of immeasurable discretion is being added in the proposed 2020 QAP that opens the Authority for scrutiny and accusations of bias toward one developer or another and potentially allows for unlawful acts or influence by decision makers.

2) \$6,000 Land Appraisal Fee

Typically, developers have paid \$1,500 to \$2,000 for appraisals. SC Housing now wants to manage the appraisal process for a fee of \$6,000. This fee is excessive.

3) Transparent Reconsideration Process that Allows for Developer Participation

The reconsideration process needs to provide adequate legal remedies and processes and be subject to the Administrative Procedures Act, as in any other state agency.

Developers should have an opportunity to present in person their side of the appeal, especially considering that SC Housing is able to interact with the Hearing/Review Officer and the Board Review Committee.

In addition, as is done in other states, the development community should be allowed to inform SC Housing of flaws with other application. This is a benefit to SC Housing because affordable housing professionals with years of experience in dealing with the myriad of details associated with the LIHTC Program can more easily spot errors that could have a very damaging impact to the program than a new staff person that has limited knowledge of LIHTC development.

4) Wetlands Determination and Wetlands Sites Exclusions

The proposed requirement would require a wetlands determination by a wetlands professional at an additional cost of approximately \$4,000. However, this is already addressed in the Phase I Environmental Study. Wetlands are determined by the US Army Corps of Engineers (ACOE) and must be previously flagged and staked by a surveyor to submit this application to the ACOE. There is insufficient time in the application process to achieve all of this. This certification could not be *absolute* without the *determination*

from the ACOE. At a minimum the word *certifying* needs to be replaced with *stating to the best of their professional knowledge*, in order to meet the stated application deadlines.

In addition, sites should not be automatically rejected because a small portion has wetlands or is in a flood plain. Many good sites might have a small wetlands or non-jurisdictional wetlands associated with it. If a site is 80% buildable and the small portion of wetlands will not be negatively impacted, it should be considered. Previous developments have been able to incorporate some wetlands into green space and buffer areas that actually enhance the attractiveness of the property. Small pockets of wetlands are better protected by the state and federal regulations involved with LIHTC development compared to creating small land locked parcels that put these wetlands at greater risk.

- 5) **Applicant Qualifications** - There are several issues associated with this concern. First, it will be difficult to apply the applicant qualifications fairly across all applicants where information is impossible or difficult to obtain from other allocating authorities. Second, applicant disqualifications should be determined prior to application submission. There is significant cost associated with compiling and submitting an application only to learn that you have been disqualified. That information could be provided at the beginning of the process.

In addition, involuntary actions should be exempt from these items as the developer has little control over some issues and others will be impossible to be consistent.

- a. Uncorrected 8823's – This is the IRS Non-Compliance reporting form and there are circumstances outside the developer's control that may cause this. For example, at initial lease up an income eligible resident moves into a property and remains in the unit for several years. Although they have lived in the unit for years, they have had a change in income which would put them over the allowable income limit. This is a reportable offense to the IRS. However, the developer cannot evict a resident because their income has increased. Developers may be able to correct the issue but not within the allowed cure period thus resulting in an uncorrected 8823. This should only be applicable if the 8823 resulted in a permanent noncompliance finding.
- b. Deferred maintenance, mold, building code violations, etc. - This cannot be enforced fairly unless Authority staff are going to walk every unit in every property owned by each applicant. More experienced developers with larger portfolios are at greater risk just based on the number of units. Developers with out-of-state portfolios will have an advantage as that information will not be readily available. Developers make every effort to correct noncompliance situations immediately. However, this requires communication from the residents and management to the developer for remediation. This should be applicable only in instances of repeated or ongoing problems without an Authority approved corrective action plan.
- c. Suspension of, lapse in, or absence of appropriate professional licensures – This should be defined to be limited to South Carolina licensing.

6) **Required Management Experience Threshold**

The current QAP requires the proposed management company be approved based on two lists of criteria. While most items are easily achievable, there are several that are more problematic. SC Housing compliance staff should approve the management company prior to initial leasing of a property and establish an annual review similar to other states. A process to approve management companies prior to application submittal would eliminate disqualified applications from a management company issue. After initial approval, a management company would not be burdened with resubmission for each new client property.

Other criteria that have potential to create significant problems are:

- a. **Occupancy rates \geq 93% for all properties** - There are some smaller properties where 1 or 2 vacancies would cause the property to fall below this threshold. There is no benefit in having vacant units and developers/management are motivated to keep units occupied even if rents must be lowered. Typically, the management agent is compensated based on collected revenue so there is incentive to keep all units occupied. At a minimum this threshold should be dropped to a 90% average over the portfolio for the preceding twelve month period.
- b. **Monthly collection of 95% of resident receivables** – This criterion needs further definition to explain if this is a specific snapshot in time or an averaged collection. Properties are dealing with an income challenged population. The goal is always to collect 100%. However, sometimes circumstances prevent such and plans have to be implemented to work with those residents to bridge that situation. The only other option is to evict slow pay residents. The 2019 SC Housing Needs Assessment indicated eviction was a problem, so this criterion could exacerbate this situation. A 90% monthly collection over past twelve months threshold is more reasonable and supportive of tenants.
- c. **Management agent responsible for aged payables and no unpaid invoices over 60 days** - This is an owner decision and to hold the management agent responsible is problematic. One owner could dispute a vendor charge and withhold payment that would result in a disqualification with the management agent that other developers use.
- d. **Applying *No uncorrected 8823's* fairly across all applicants** – This has potential to be more punitive against applicants that have been participants in South Carolina. Unless SC Housing has some means of uncovering uncorrected 8823's in other states this would penalize developers that have experience in SC. In addition, there are situations where 8823's are the result of involuntary actions that the owner/developer, and/or management agent have limited recourse to resolve in a timely manner.

7) **Lack Of Specific Thresholds For The Required Capacity Criteria**

Previous QAPs contained specific applicant participation thresholds. This not only created safeguards for the program but also guidelines for developers. At a minimum, there should be financial threshold requirements to participate in the LIHTC program and be applied consistently to all applicants. This ensures that all applicants can manage the

often unplanned expenses that arise. Moving forward to 2021, SC Housing could establish a system to approve developers in advance of submitting applications. In addition, *without an extension* should be removed. Many municipalities are backlogged and it now takes longer for permitting approvals, etc. This penalizes developers for things beyond their control.

Also the experience requirement of 2 awards in the past 10 years is too low. Inexperience in South Carolina is problematic and can be resolved by requiring greater experience levels.

- 8) Definition of and adjustment of unidentified, unusual or excessive fees and cost amendments** – There needs to be a clear definition of these terms and stated procedures on cost adjustments and how these will be consistently applied to all applications. Resources have already been capped at a level lower than 2019 awards. . It is unreasonable to allow that level of unfettered discretion. Further, the Authority may disqualify applications not reflecting an efficient use of the tax credits. Authority staff does not have the experience of putting a development together from application, to placed-in-service, through operations. It is unreasonable to assume that they have the knowledge to apply this type of discretion. There are already enough checks and balances within the financial criteria to limit these types of unnecessary expenses. This needs to be removed.

Other issues related to that:

- a. **Efficient and marketable use of site, considering size and layout** – This criterion will impact accessibility requirements when the proposed elevation requirements are going to reduce the ability to maximize the site density. Building to the full density that zoning allows is often not achievable and staff needs to understand that conditions can dictate lessor units.
 - b. **Undue enrichment of any project participant or contractor particularly where there are identities of interest** – This item needs to be clearly defined and with an explanation of how it will be applied. The QAP already has limitations on developer fees and contractor profit/overhead so to include this as discretionary criteria is unnecessary. This should only be an issue if someone exceeds the prescribed limitations.
 - c. ***Transaction appears to be driven primarily by the transfer of the property.*** - Every acquisition is driven by the transfer of the property. This could be limiting in refinancing, acquiring, rehabbing, and expiring LIHTC transactions. If the applicant includes an appraisal of the property that justifies the acquisition cost and has an attorney opinion that it meets the acquisition threshold under the code then SC Housing staff should not have a right to DQ the application.
- 9) Changes in Reserve Requirements**
The industry standard is that operating reserves are funded at the time of conversion and for replacement reserves to be funded monthly, not annually. The perm loan and stabilization equity pay-in funds are available at that time to establish the operating account. Lenders and equity investors are good with this provision so any attempt to

dictate more burdensome financial conditions is unnecessary. The developer is responsible for any operating shortfalls during the stabilization period. It is problematic that SC Housing would require approval authority over replacement reserve withdrawals. The perm lender and equity investor already manage these accounts with a high level of scrutiny and another level of oversight is not necessary. Generally, the partnership agreement has some threshold and does not require approval as the lender/investors understand the interference in day-to-day operations is not healthy for the property. This is just layering another approval and reason to further complicate the day-to-day operations of these properties.

10) Contractor Cost Certification Requirement

This requirement for a Contractor Cost Certification is another example of adding unnecessary costs to the transaction. The QAP already limits the amount of resources available so if an awarded transaction runs into additional costs during construction those will be absorbed in the developer fees/contractor profits with the developer ultimately at risk. This certification should only be required if the staff has solid justification that there is reason to require it. Otherwise this is a waste of resources as it will push the transaction costs up \$10,000+ after all construction costs are finalized.

In addition, does SC Housing have qualified staff to review and challenge these costs? Developers rely on average industry standards because there are no published multifamily LIHTC standards and site costs vary per development. SC Housing is limiting the resource on the front end and not increasing them at placed-in-service so if there are cost overruns that is the developer/contractor burden. Developers should not be further burdened by adding another unnecessary expense.

11) Inconsistency with Federal Program allowing LIHTC Developers to Exit the Program.

Under Affordability, Item 4 limits the ability to transition the property through the Qualified Contract (QC) as allowed by Section 42. There are legitimate reasons that affordable developers apply for QC and still operate as affordable. Most of these properties will never escape the affordable stigma. However, by removing them from the program they can be repositioned and better serve those persons falling in the 80% -120% of area median income that are currently ineligible for the majority of the affordable housing programs.

It is equally important that the Authority understands QC has been permissible by Section 42 and included as an option by limited partnership agreements since program inception. Until there is a plan to address aging LIHTC deals, the rights provided to developers by Congress should not be taken away and require developers to pump hundreds of thousands of dollars into a declining property. This will cause developers to leave the program and the loss of more units than can be replaced.

This policy has punitive impact on developers with longer tenure in the affordable industry with an aging portfolio. Typically, the limited partner wants to exit the transaction prior to Year 18 and the only way to get them out is to restructure with new

debt and some rent adjustments may be necessary to achieve sufficient debt to reposition an aging property.

10) Nonbinding Letter Of Intent For Syndication Rates As A Scoring Criteria

To use this as a scoring criterion at the current proposed level puts developers and SC Housing at risk of funding transactions based on preliminary information. The QAP has \$.93 and above as the highest point level. However, SC transactions are not achieving that pricing in the marketplace. Since the 2016 tax reform, transactions are not as profitable to the investor community and thus pricing has been lowered. Attempting to score applications by providing points for an unachievable equity price will cause transactions to fail or cause the Authority to re-underwrite. This is unfair to other applicants that have not stretched the equity price to achieve a higher score. Numerous equity partners have cautioned the Authority against using this criterion and specifically at that \$.93 level. The maximum equity price level should be lowered to at least \$.90 according to all indications from equity providers. This would limit developers from lowballing equity and cost and increasing both later.

11) Point Incentive For Costs 10% Below Average

Encouraging a “race to the bottom” has created serious problems in other states and has been overturned. A system that rewards transactions within a range of the average so that developers with extremely high or low costs are differentiated from the pack is better policy and creates a more efficient system. Another option to consider is a scale to incentivize applicants to provide solid numbers in their attempt to be close to the average provided by all the applications.

12) HOME Funds Point Incentive

The current proposal is to award 15 additional points for projects applying for a \$500,000 in HOME funds. To incentivize this is poor policy because it will cause some applicants to be disqualified once the limited HOME pool of funds is exhausted, even though they have excellent sites and applications. If the end goal is to maximize use of HOME funds in the 9% round it would be better policy to eliminate the points for HOME funds and lower the maximum award of HOME to \$400,000 per deal and make it mandatory to use those funds on all new construction applications.

13) Tie-Breaker Criteria: A. *Projects with lowest share of total development cost funded by the Authority will be based on the Percentage of Authority resources to Total Development Cost*

There are many resource containment criteria in the QAP. This item is not needed and could be detrimental to the program if developers felt compelled to push costs even lower to avoid a tie-breaker. A more sound policy would be to use Tie-Breaker C, a county not served in the last two years, as the first priority and then use tie breaker B.

14) Maximum Rents Proposal

Implementing maximum rents creates a housing burden for extremely low income and very low income residents and is in direct conflict with findings presented in the 2019 SC Housing Needs Assessment. In many locations the maximum rent cannot be achieved and have actually decreased from last year. Maximizing rents creates an additional burden on

all residents just to fund a few more units along with increasing risk for all development parties.