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Homes & Community Renewal

NEW YORK STATE DIVISION OF HOUSING & COMMUNITY RENEWAL

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COMMISSIONER/CEO

MEMORANDUM

To: All Interested Parties

From: Darryl C. Towns, Commissioner, New York State Division of Housing and Community Renewal ("DHCR")

Date: October 8, 2013

Subject: Explanation of Low-Income Housing Credit Allocations Not Made in Accordance with Established Selection Criteria

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Pursuant to U.S. Internal Revenue Code (IRC § 42(m)(1)(A)(iv)), and DHCR's LIHC Qualified Allocation Plan (QAP §§ 2040.3(g)(5) & (6)), this memorandum provides a written explanation for DHCR's decision to allocate $5MM of federal low-income housing credits ("LIHC's"), for projects in the Preservation Initiative Program ("PIP"), in a manner that may vary from the selection criteria set forth in the IRC and the QAP.

Background

It is the policy of New York State, and the purpose of state and federal housing programs, to provide safe, decent and affordable housing opportunities to all persons in all areas of the State. DHCR is the lead housing credit agency ("HCA") for New York State and has administered the LIHC program since its inception in 1987. Since then, DHCR has been successful in fully allocating the State's annual allotment of LIHC. The effective and efficient deployment of this important affordable housing resource has been accomplished through DHCR's innovations in the use of LIHC and its adoption of recognized best practices in affordable housing finance to meet the changing housing needs of the State.

IRC and QAP Rules Regarding the Allocation of LIHC's

Section 42 of the IRC establishes the LIHC program and, together with various Treasury regulations, delineates the responsibilities of HCA's in administering the program. Section 42(m)(1)(B) of the IRC mandates that all credit allocations be made pursuant to a QAP developed by each HCA that "sets forth the selection criteria to be used to determine housing priorities of the housing credit agency which are appropriate to local conditions" and gives preference to projects serving the lowest income tenants; projects obligated to serve qualified tenants for the longest period of time;

and projects in qualified census tracts where the development "contributes to a concerted community revitalization plan." Additionally, the IRC sets forth certain selection criteria that all QAPs must include (See, IRC § 42 (m)(1)(C)).

However, the IRC provides an exception to its selection criteria mandate, to account for circumstances under which a state achieves a public policy objective in a manner that varies from its adopted QAP. Section 42(m)(1)(A)(iv) states that LIHC's awarded to any project shall be zero, unless, "(iv) a written explanation is available to the general public for any allocation of a housing credit dollar amount which is not made in accordance with established priorities and selection criteria." DHCR's QAP mimics the IRC's LIHC allocation requirements (See QAP 2040.3(g)), as well as its exception to the IRC's selection criteria mandate (See QAP 2040.3(g) (5)). Thus, both the IRC and our QAP afford DHCR the flexibility to identify and address emergent housing needs by allocating LIHC's accordingly.

<u>The Preservation Initiative Program</u>

The PIP is an innovative approach adopted by DHCR to meet some of New York's most pressing housing needs by preserving, rehabilitating and upgrading the State's existing affordable housing stock. Under PIP, DHCR rated and ranked 274 projects, encompassing 6,672 units, for which it has regulatory oversight responsibilities. The projects were originally financed, at least in part, through awards from one or more of the State's affordable housing finance programs, including LIHC. The projects were reviewed and scored based upon life safety concerns, emergency egress, accessibility deficiencies, structural and fire safety issues, and the necessity of improvements that would reduce overall operational costs such as reducing building maintenance and improving energy efficiency.

Following the review and ranking process, 53 projects were identified and made part of the PIP portfolio. These projects were deemed to be the most in need of physical and technological upgrades. The physical upgrades will focus on preserving and extend the useful life of projects, and the application of current technologies and energy efficient operating systems are expected to significantly reduce long term operating costs, thereby reducing or eliminating certain financial responsibilities which otherwise might be incumbent upon the State to assume.

DHCR determined that LIHC's would need to be leveraged with other affordable housing program funds, in order to adequately fund the rehabilitation of the properties in the PIP portfolio. Accordingly, in addition to DHCR's allocation of $5,000,000 in LIHC's, the Housing Trust Fund Corporation agreed to commit $25,000,000 from the New York State Low-Income Housing Trust Fund Program to the PIP projects.

<u>Analysis, Explanation and Commissioner's Determination</u>

Applying the relevant IRC and QAP rules and regulations to the circumstances and procedures described above, I find DHCR's allocation of LIHC's to the PIP portfolio's projects to be valid and justified, despite any possible variation from the QAP's selection criteria, for the following reasons:

First, the use of LIHC's for the preservation of the State's existing, affordable housing stock furthers the goals and intent of the LIHC program, which is to provide safe, decent, and affordable housing opportunities for low-income households. As noted above, the rehabilitation of the PIP portfolio will preserve and extend the useful life of the projects and significantly reduce long term operating costs, thereby ensuring the seamless operation of such units and offering substantial benefits to all parties.

In addition, the preservation of existing affordable housing projects has been specifically identified by the Department of Housing and Urban Development ("HUD") as an initiative to be recognized in the LIHC allocation process. HUD's FY 2014 Budget Request includes a proposal that QAPs adopted by HCA's include a project selection criterion which would encourage states to address the preservation needs of existing affordable housing.

Further, the use of LIHC for the preservation of existing affordable housing projects is currently an initiative under DHCR's existing QAP. DHCR previously anticipated that preservation activities would be necessary and, accordingly, amended its QAP to include a provision for allocating LIHC for the preservation of existing developments. QAP § 2040.3(g)(6) explicitly reserves DHCR's right to set aside LIHC's for the purpose of implementing the State's housing goals, including but not limited to, set-asides for preservation projects and supportive housing projects.

Finally, allocating LIHC's to projects in the PIP portfolio will yield additional benefits, beyond the preservation of the affordable units. As noted above, the PIP selection process identified projects that have "imminent physical needs and/or financial distress." Rehabilitating and enhancing the profile of these projects will benefit not only the residents but the surrounding communities. An influx of capital now will prevent the need for a greater allocation of State resources in either the near- or long-term future. In addition, the physical rehabilitation will create jobs and have a positive economic impact on the communities where the PIP projects are sited, the majority of which are located in upstate New York.

Therefore, after due consideration and based on the information presented to me, including the above, I have determined that DHCR's allocation of LIHC's for use in the PIP in a manner that may vary from the selection criteria set forth in the IRC and the QAP is (i) valid and justified under the IRC and DHCR's QAP, (ii) consistent with the State's housing goals and the regulatory intent of LIHC, and (iii) in the best interests of the citizens of the State of New York.