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Mr. Ed Yandell
Tennessee Housing Development Agency
404 James Robertson Pkwy Ste 1200
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Dear Ed,

The National Housing & Rehabilitation Association's (NH&RA) Tennessee Developers Council (TDC) is pleased to provide the following feedback to the Tennessee Housing Development Agency (THDA) staff and directors. We hope that these comments will be helpful in formulating policy proposals as the staff and committee begin drafting changes for the state's 2013 Qualified Allocation Plan (QAP). The following comments primarily respond to the discussion and materials presented at the January 24, 2012 THDA Tax Credit Committee meeting.

Creation of an Acquisition Rehabilitation Set-Aside

Whenever possible, TDC tries to build consensus on policy issues facing our members. When there is no consensus we try present to THDA the varying perspectives in a concise and neutral fashion.
Because TDC's membership is comprised of affordable housing developers with a diverse array of business focuses, at this present juncture TDC is not comfortable presenting a recommendation with regards to:

1) Whether there should be an acquisition rehabilitation set-aside in the 9% LIHTC program and
2) If there should be a set-aside what size it should be.

While some of our member's business models focus on rehabilitation of existing apartments, others primarily build new construction projects, which leads to different perspectives within the organization as to the highest and best use of this limited resource.

We do think we can provide substantive input on this topic but that first it would be helpful to have a better understanding as to the Agency and Board's specific motivations behind the proposal. If possible, we would like an opportunity to discuss with staff and/or the board the following discussion questions: What is the overall goal of the proposed set-aside? Is the proposal targeted to preserve existing affordable rental housing or is there a perception that there is too much new housing stock in some markets? If the Agency's primary goal is preservation, which housing stock (e.g. Section 8, Year-15 LIHTC, USDA RD projects, market rate housing that is currently 'affordable', etc.) is the Agency seeking to preserve?

Development Team / Property Management Company

TDC supports creating stronger accountability within the LIHTC program. We concur, that having even a small number of bad actors participating in the program (whether it be in the development/ownership of the property, a consultant, or its management) is bad for the program. Strengthening eligibility criteria for the development team is a great due diligence step for the Agency to consider; however, we urge the Agency to consider a few issues as it drafts its proposal.

We understand the Agency is currently considering adopting a five year look-back at the development team's performance within the state's LIHTC program and would consider disqualifying general partners from participating if they have been removed for malfeasance during this period. It is very important that THDA carefully define malfeasance for the purposes of this criterion. While it is not necessarily common, it is possible for a 'good' GP (or an individual member in the partnership) to be removed or to remove one's self from a LIHTC partnership for a variety of reasons other than being a 'bad actor'. The Agency should also consider granting relief from this provision to developers/managers that step in and take over the project in order to resolve issues created from neglect by former GPs/developers. TDC would appreciate the opportunity to work closely with THDA as it crafts this definition.

I believe we also share the same general goal that these new criteria be equitable. As such, we hope that any new criteria will consider developer/manager performance within the LIHTC program nationally and not just in Tennessee. We are concerned that if the Agency does not consider the track record of applicants outside of Tennessee, it would not be meeting its full due diligence obligations and may even encourage 'bad actors' to seek development opportunities in the state. In this, we also understand that there are some practical enforcement challenges to monitoring the activities of developers/owners outside of the state. However to avoid these enforcement challenges, TDC suggests the Agency consider limiting developers with no tax credit development experience in Tennessee to one (1) deal for the first time they receive an allocation and limit or prohibit a future allocations until such project is placed in service and/or until 8609's are received for the initial transaction. Additional steps the agency might consider could include requiring all applicants to sign a release indicating 1.) Which states the development team owns and/or operates affordable housing and 2.) Acknowledge that THDA can and will contact other state agencies to determine the quality and qualifications of the developer and/or management team to participate in Tennessee LIHTC program. THDA could also consider requiring and/or incentivizing applicants to pre-screened property managers through the creation of an approved list.

Energy Efficiency Design

We commend the Agency for its proposal to encourage energy efficient design through the adoption of an energy efficient utility allowance. We believe that this approach will incentivize many owners to incorporate more cost-effective utility efficient design features into their projects by allowing them to capture energy savings in the form of increased net rents while keeping the net burden on the resident. However, we would caution that while this regulatory structure should work well in some types of properties (e.g. non-HUD-assisted apartments) and markets (e.g. properties located in markets that can command the maximum tax credit rents) we are uncertain it would be effective in all markets. Moreover, it may be impossible or at the very least impractical to install or retrofit many of the current energy efficient measures into an existing property.

Income Targeting

The Board and THDA staff has proposed creating additional scoring criteria to encourage developers to increase the number of deep-income targeted units in the LIHTC portfolio. We recognize that the demand for affordable housing for lower-income Tennesseans far outstrips the supply and encourage the Agency to develop innovative solutions to help house everyone in need. At the same time, the Agency must also balance the economic sustainability of the affordable housing portfolio. The Agency must consider many factors as it crafts its proposals. For example, is there an actual market for those units (i.e. enough income qualified people that can afford the rent)? How will the increased number of deeper-income targeted units affect the financial sustainability of the property (i.e. will the decrease in rents allow the property to sustain reserves, debt service, etc…).

We observe that most states that seek greater proportions of deeper income targeted units also make available soft funds (e.g. HOME Funds, housing trust funds, etc…) to decrease the amount of hard-debt a property must carry. It is noted that this type of incentive may make certain types of properties (e.g. projects with rental assistance, public housing, etc…) and/or markets (e.g. areas where there are a large number of residents with vouchers) more competitive for funding. To the extent that other resources become available, TDC urges THDA to consider making some source of dedicated funds available for rental development.

Community Characteristics / Market Studies
High quality market studies are a critical tool for both developers and the agency in determining the feasibility of affordable housing projects. TDC supports adopting clearer and more uniform market study guidelines in the QAP. We also support efforts to create more accountability to THDA on the approved list of market study providers and encourage the Agency to adopt minimum standards for getting on the approved list such as achieving the National Council of Affordable Housing Market Analysts Member Designation. We also believe that it is important that THDA have the ability to remove analysts from the approved list should the quality of their work product not meet the agency's standard.

We would also like to bring to your attention some potential issues that may arise regarding the Agency's proposal to limit new construction LIHTC applications in areas where there are high vacancy levels in the current LIHTC portfolio. We generally concur that the Agency should be careful allocating LIHTCs in markets that are already saturated but any policy addressing this concern must be nuanced, as vacancy in the existing stock in and of itself might not be sufficient to determine demand. For example, vacancy in many cases is only a snapshot of a market on one particular day; if vacancy and/or occupancy are going to be used to determine demand, it should be over time in order to get a more objective trend in the market. In addition, any policy used to determine demand should take into account the type of building stock. For example high levels of vacancy in a family project may not impact the demand for senior properties. Likewise, factors like unit mix, income targeting, construction type, on sight services, etc…may also affect demand. It would also be worthwhile to get some insight from the Agency as to what types of acquisition-rehabilitation projects they are envisioning would be eligible in areas where there is high vacancy (e.g. existing LIHTC, HUD-assisted, non-assisted, etc…). From a practical perspective, it would be very helpful for the Agency to release well in advance of any funding round (we recommend 6 months) to the development community any markets and/or counties that would be ineligible.

Leveraging Other Funds
TDC members would generally concur that securing local sources of financing to supplement LIHTC is desirable; however, there are some practical challenges to doing so as a matter of public policy. Sadly, there are very limited local resources available in Tennessee. Many jurisdictions in need of affordable housing simply do not have access to common sources of leverage like HOME, CDBG, tax increment financing, etc… From a practical perspective, we observe that such scoring incentives would likely drive development to particular jurisdictions and perhaps particular types of projects and/or sponsors (e.g. housing authorities, non-profits, etc…).

The Agency must however keep in mind that one practical limitation to this scoring criteria is the issue of timing. For instance, the application rounds and deadlines for several funding programs (e.g. LIHTC, HOME, CDBG, etc…) do not align, which can lead to difficulties in terms of receiving firm commitments from local jurisdictions. Municipalities typically favor seeing commitments from other sources before making any commitments of their own. In other words, they prefer to be the "last piece of the puzzle" to ensure use of their limited resources.

In addition, it is very important that the agency carefully define "firm commitment" for purposes of scoring as well as the implications if "firm commitments" are not met. Unfortunately, we observe that it is not uncommon for localities to "un-commit" their funds at a later date (e.g. a new mayor is elected with different priorities).

Expediting the Cure and Review Process
We recognize that the cure and review process has been a controversial and time consuming process. TDC commends the Board for seeking ways to streamline the process. Shortening the cure and review process would certainly be advantageous to development schedules. We also think that further structural reforms would be advantageous. Clarifying scoring criteria so that there are fewer issues that are likely to be appealed would certainly improve the process. We also observe that the ability to appeal a cure decision to the Board can actually give applicants a power and perhaps scoring advantage over other applicants.

Best Regards,

Thom Amdur
Executive Director

cc: Donna Duarte
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About the Tennessee Developers Council
The Tennessee Developers Council is an independent council of the National Housing & Rehabilitation Association comprised of LIHTC and affordable multifamily developers (both private and non-profit) who work with the Tennessee Housing Development Agency. The Council convenes on a regular basis to share ideas, network, and provide a clear voice on key policy issues being considered by THDA and state legislators.

About National Housing & Rehabilitation Association
NH&RA is a national trade association comprised of professionals involved in the development, ownership, operation and finance of multifamily affordable housing. Formed in 1971, our members include developers, owners, property managers, debt and equity providers, attorneys, accountants, and other professionals involved in tax-advantaged real estate.