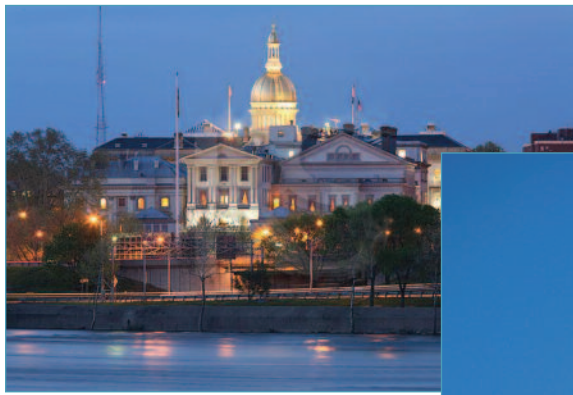


# Building Opportunity II:

## Civil Rights Best Practices in the Low Income Housing Tax Credit Program (2015 update)



## ***Acknowledgments***

This report was researched and prepared by Sarah Oppenheimer, (MPH, Harvard School of Public Health, and Ph.D candidate, University of Washington), with significant input and contributions from PRRAC staff, including Megan Haberle, Etienne Toussaint, and Philip Tegeler.

Cover: featured, clockwise from the center, are the state capitols of Pennsylvania, Texas (credit: LoneStarMike), Ohio (credit: @havecamerawilltravel.com), Massachusetts, North Carolina, and New Jersey (credit: www.ronsaari.com).

This summary report is an update to our 2008 report, *Building Opportunity: Civil Rights Best Practices in the Low Income Housing Tax Credit Program* (PRRAC and the Lawyers' Committee for Civil Rights Under Law).<sup>1</sup> That report used the most recent state Qualified Allocation Plans (QAP) (as of 2008) to analyze requirement and scoring parameters that have the potential to reverse segregated housing patterns, expand housing opportunities for low income families and families of color, and use the Low Income Housing Tax Credit (LIHTC) to de-concentrate poverty and improve civil rights practices.

The present analysis uses the most recent finalized QAP for each state available as of fall 2014, plus Chicago and New York City (which have separate QAPs from their state HFAs).<sup>2</sup> In most cases the QAP analyzed is dated 2014, though some states continue to use QAPs from 2013 or earlier.

While this update includes many of the measures established in the 2008 report, it has been adapted to reflect recent trends in LIHTC requirements and state and federal housing policies. Our analyses include three broad areas:

**I. Site and neighborhood standards.** This section includes strategies related to the following: A) racial and/or economic concentration/de-concentration; B) siting provisions pertaining to land use and service factors, such as proximity to high-quality schools, proximity to transit, and proximity to either neighborhood assets or detriments.; and C) the extent to which QAPs focus on and define a Neighborhood or Community Revitalization Plan.

**II. Tenant targeting standards.** This area includes efforts around affirmative marketing and outreach to low-income and otherwise vulnerable populations (e.g., populations with limited English proficiency, public housing residents, etc.).

**III. Reporting standards.** This indicator, added specifically for the 2014 update, reflects new requirements made under the Housing and Economic Recovery Act of 2008 that each state tax credit allocating agency provide HUD with information on residents' race and ethnicity.

It is important to note that the presence or absence of particular provisions in the QAP is not determinative of its overall effectiveness in advancing civil rights. We know that QAPs matter,<sup>3</sup> but they must be evaluated in their entirety, and also in their implementation.<sup>4</sup> For example, even where extra points are awarded for siting near high performing schools, that incentive may be undermined by more significant awards for competing criteria. Still, the features described in this report represent continuing incremental progress toward a Low Income Housing Tax Credit program that recognizes the value of fair housing and access to opportunity for low income families, and offer models for HFAs seeking to improve their civil rights performance.

## Methodology

The data for this update is based on a review of the most recent available final Qualified Allocation Plan (QAP) for each state as well as those for Chicago and New York City (as of 12/31/14). Final QAPs were accessed through the Novogradac Affordable

1 Available at [www.prrac.org/pdf/2008-Best-Practices-final.pdf](http://www.prrac.org/pdf/2008-Best-Practices-final.pdf).

2 The state of Maryland is excluded from this new report due to PRRAC's involvement in a formal coalition civil rights complaint pending against the state housing finance agency at the time of publication.

3 See Effect of QAP Incentives on the Location of LIHTC Properties (U.S. Department of Housing and Urban Development, April 2015) available at [www.huduser.org/portal/publications/pdf/QAP\\_incentive\\_mdr.pdf](http://www.huduser.org/portal/publications/pdf/QAP_incentive_mdr.pdf).

4 For a good discussion of this issue, see Jill Khadduri, *Creating Balance in the Locations of LIHTC. Developments: The Role of Qualified Allocation Plans* (PRRAC and Abt Associates, February 2013).

Housing Resource Center website<sup>5</sup>. Unlike prior QAP reviews which focused on only a subset of states, this analysis was comprehensive in its review of 49 states as well as Chicago and New York City.

Each QAP was reviewed according to 23 indicators that fall within the three areas listed above. Following each QAP review, a summary matrix was generated for each state and city indicating whether their QAP included provisions pertaining to these 23 indicators, and describing the content of such provisions. Once all QAPs had been reviewed, each of the listed provisions was categorized as follows based on the strength<sup>6</sup> of its fair housing requirements: strong positive provision; moderate/weak positive provision; strong negative provision; moderate/weak negative provision; positive preference but lacking specific requirements/scoring criteria; or positive provision but one that is a federal requirements for all states.

**Ranking Legend:**

◆	Strong positive provision
◆	Moderate/weak positive provision
◆	Positive preference (w/out specific requirements or scoring)
◆	Strong negative provision
◆	Moderate/weak negative provision
◆	Not Ranked

In general, the more influential the criteria/provision is to a development’s overall score, the stronger it is considered to be. For scoring purposes, criteria with point values ≥10 are considered to be strong (except in rare instances when the overall point total is significantly larger than the 100-200 range used in most QAPs). This scoring system indicates which QAP provisions support or potentially undermine civil rights best practices and the relative contribution (i.e., strength) of these positive or negative provisions toward a proposed development’s overall score.<sup>7</sup>

The following sections highlight strong QAP provisions in the three broad areas listed above.

**I. Site and Neighborhood Standards.**

As noted above, site and neighborhood standards include three strategic areas: provisions pertaining to de-concentration (racial, economic, and/or geographic); B) siting provisions pertaining to land use and service factors; and C) provisions that focus on and/or define a Neighborhood or Community Revitalization Plan.

**A. Deconcentration Measures**

Massachusetts, North Carolina, and Pennsylvania have QAPs that explicitly mention the role of tax credit development in reducing racial segregation, and also place a strong emphasis on development in opportunity areas.<sup>8</sup>

Excerpt from Massachusetts 2014 QAP:

*The following statements describe some of the characteristics that [the MA QAP] seeks to*

5 Accessible at [https://www.novoco.com/low\\_income\\_housing/lihtc/qap\\_2013.php](https://www.novoco.com/low_income_housing/lihtc/qap_2013.php).

6 For the purpose of this ranking system, a positive provision is one that was considered to be supportive of civil rights best practices. Inversely, negative provisions are those that either directly or indirectly conflict with civil rights goals.

7 Future work in this area may consider a more nuanced and quantifiable ranking rubric (e.g., the contribution of possible points awarded for each provision as a percentage of total points possible).

8 Massachusetts defines what is meant by ‘opportunity area’:

*DHCD defines an area of opportunity as part of a neighborhood or community with a relatively low concentration of poverty (poverty rates <15%) that also offers access to opportunities such as jobs, health care, high-performing school systems, higher education, retail and commercial enterprise, and public amenities (MA QAP p. 37).*

*encourage and reward through the [threshold requirements] and point scoring system, regardless of project type:*

- *The project will provide affordable family housing in an area of opportunity.*
- *The completed project will have a positive impact on the surrounding neighborhood.*
- *Consistent with fair housing policies, the completed project will offer expanded opportunities to racial, ethnic, and other groups protected under fair housing laws who are underserved in the community in which the project is located. (p. 19-20).*

Pennsylvania does not use the term “opportunity areas” but awards the following:

*Up to 20 points to developments in areas that demonstrate the following relative to the immediate market area: low poverty rates, limited affordable housing options (both subsidized and non), limited affordable housing production in past 20 years, close proximity to employment, strong housing markets high owner-occupied markets (PA p. 27).*

The North Carolina QAP specifies that as a general requirement, “Projects cannot be in areas of minority and low-income concentration (measured by comparing the percentage of minority and low-income households in the site’s census tract with the community overall)” though exceptions may be granted for economically distressed areas which have community revitalization plans with public funds committed to support the effort (NC 2013 p. 23).

Another de-concentration approach is evident in QAPs from states such as Texas and New Jersey, which include multiple provisions pertaining to de-concentration by geography and/or property. Texas

outlines five specific “de-concentration factors” as threshold requirements for tax credit projects and as required by Texas State Code<sup>9</sup>. These are framed primarily in terms of the required distance between tax credit properties as well as the percent of tax credit properties that are allowable in a particular area (see TX 2014 p. 3-5). New Jersey also includes strong requirements pertaining to de-concentration of LIHTC projects:

Excerpt from New Jersey 2013 QAP:

*Non-preservation projects located in census tracts wherein 30% or more of the existing housing units are low-income housing tax credit units shall not be eligible for funding unless the following criteria are met:*

- The project must be a redevelopment project;*
- The project does not add more low-income units to the census tract;*
- The project plan includes relocation options to higher opportunity areas and mobility counseling assistance for existing residents; and*
- The application includes a municipal resolution that references this paragraph and supports the allocation of housing tax credits for the development (NJ p. 37).*

North Carolina, Rhode Island, and Utah include similar geographic de-concentration provisions at the project level.

Other states that include strong de-concentration provisions are Maine which prioritizes “projects that contribute to economically diverse communities” (p. 7), and Tennessee which has restrictions on the percentage of tax credits that may be awarded within a “Qualified Census Tract” (QCT) or for preservation/rehabilitation:

<sup>9</sup> Sections 2306.6711(f), 2306.6703(a)(4); and 2306.6703(a)(3). The Texas DHCA Uniform Multifamily Rules also list “undesirable site features” and “undesirable area features” which can render a site ineligible. (Uniform Multifamily Rules, Subchapter A, § 10.1)

Excerpt from Tennessee 2014 QAP:

*No more than 50% of the total amount of Tax Credits available for allocation in Tennessee will be allocated to developments located completely and wholly within a QCT. No more than 40% of the total amount of Tax Credits available for allocation in Tennessee will be allocated to developments involving preservation or rehabilitation (p. 5).*

Ohio structures its QAP into criteria for location-based characteristics and development characteristics, both of which provide strong provisions for positive site and neighborhood standards (particularly as these pertain to new construction). Points are awarded for developments located in high-income census tracts and/or in non-QCTs. Illinois sets aside 17.1% of all tax credit funding for AHPAA Opportunity Areas in the Chicago Metro area.<sup>10</sup>

### Suburban Set-Asides

At least two states enhance these opportunity-oriented provisions by creating an actual set-aside of tax credits for family developments in suburban areas. For example, the New Jersey QAP creates a 60% pool of tax credits available for suburban (and rural) locations by targeting 40% of family units/credits to urban areas:

Forty percent of the credits in this [family] cycle (inclusive of all set-asides) shall be made available to Targeted Urban Municipalities and the remaining credits shall be allocated to the remainder of the State,

provided NJHMFA receives a sufficient number of eligible applications from areas outside of Targeted Urban Municipalities to result in these allocation percentages. The credits allocated toward Targeted Urban Municipalities could exceed 40 percent if necessary to fully fund a project.<sup>11</sup>

Similarly, Pennsylvania's 2015 QAP divides its tax credits into a separate urban and suburban/rural pool, and then creates an additional set-aside for three developments in the suburban/rural Pool only) in areas of opportunity (see Appendix C).

### B. Related Siting Provisions

In addition to provisions related to de-concentration, many QAPs include provisions to incentivize development based on positive neighborhood features.

The Alabama, Ohio, North Carolina, and South Dakota QAPs include strong point scores/requirements for developments to be located away from detrimental land uses. For the most part, these possible point deductions pertain to projects proximity to environmental contaminants or hazards and as such, indicate implicit (sometimes explicit) implications for residents' health and wellness. Alabama specifies that an unlimited number of points may be deducted for projects developed in close proximity to 'negative services' (AL 2014 p. A8)<sup>12</sup>. In addition, Alabama specifies point deductions for proximity to nearby streets and sidewalks deemed 'unsatisfactory' (p. A8), and as a threshold requirement, will not consider sites where recognized environmental conditions are identified and have not been fully addressed in a

10 AHPAA (Affordable Housing Planning and Appeal Act) is a 2003 state law that is designed to encourage local governments to incorporate affordable housing into their communities. It identifies communities with greatest shortage of affordable housing by calculating the 'affordable housing share' for all local governments in Illinois. Incentives are incorporated into the LIHTC QAP for proposed developments in communities with a low affordable housing share (presumably, many suburban – and higher-opportunity - communities) (see <http://www.ihda.org/government/AHPAA.htm> and <http://www.hindawi.com/journals/usr/2014/787261/> for more).

11 New Jersey QAP, approved May 2013 at 17. Fifty percent of New Jersey's LIHTCs are allocated to the Family Cycle, at 5. NJ QAP is available here, <http://www.leagle.com/decision/in%20fdco%2020100928b03.xml>.

12 Negative services are defined as junk yard/dump, salvage yard, wastewater treatment facility, distribution facilities, electrical utility substations, railroads, adult video/theater/live entertainment, pig/chicken farm, processing plants, industrial, airports, prison/jail, and solid waste disposal.

manner acceptable to the Alabama Housing Finance Authority (p. 14). In a similar vein, the Ohio QAP includes a point additions for projects that do not have detrimental land use (i.e., nuisance or otherwise adverse conditions such as high levels of noise, noxious odors, or incompatible uses) adjacent to the site of the proposed development (p. 33), as does North Carolina which awards points for projects that are not located near negative features defines as being within a half mile of incompatible uses (e.g., airports, chemical/hazardous materials, industrial/agricultural activities, commercial junk or salvage yards, landfills, sources of excessive noise, wastewater treatment facility) (p. 12). The South Carolina and Georgia QAPs includes similar terms pertaining to environmental hazards. The South Dakota QAP specifies the following requirement for all projects:

Excerpt from South Dakota 2013-14 QAP:

*If the site includes any detrimental characteristic, the applicant must provide a remediation plan and budget to make the site suitable for the project. If any detrimental site characteristic exists on, or adjacent to the site, SDHDA may reject the application. Detrimental characteristics may include: location within ½ mile of pipelines, storage areas for hazardous/noxious materials, sewage treatment plant, or sanitary landfill; location within 500 feet of an airport runway clear zone; 1,000 feet of a railroad, commercial property, military operations, or a registered historic property; physical barriers; unsuitable slope or terrain; or location in flood hazard area (p. 22).*

A smaller number of QAPs use point scoring and/or threshold requirements to more explicitly incentivize development away from socially distressed areas. The North Carolina QAP specifies points for projects located in areas that are well maintained and where there are no signs of deterioration and zero points for projects located in areas that are blighted or have physical security modifications (e.g., bars on windows, barbed wire) (p. 11). The Alabama, North

Carolina, and South Carolina QAPs include point deductions for projects located in close proximity to adult entertainment centers; South Carolina also deducts points for proximity to bars and night clubs. The Georgia QAP includes point deductions for development within a quarter mile of “abandoned houses or buildings that are unoccupied, unsecured buildings that depress a neighborhood’s physical appearance, diminish living conditions and/or safety and decrease marketability” (p. 5).

The inverse of incentives to develop away from environmentally and/or socially distressed areas, QAPs frequently include scoring criteria that incentivize development near commercial centers and other services and amenities considered to be positive. As noted in footnote 5, though these provisions are usually not explicitly labeled as incentivizing development in high-opportunity areas, it is implied in such incentives for development near ‘positive’ services and amenities. Characteristic provisions on this measure are included below:

Excerpt from Arizona 2014 QAP:

*Up to 20 points for projects with existing service facilities located within 1 mile for urban projects/2 miles for rural projects: 5 points each for grocery store, schools (for households with children projects only), senior center (for older person projects only); 2.5 points each for hospital/urgent care clinic, sports and fitness center, recreation center/public park, public library (p. 26-7).*

Excerpt from Georgia 2014 QAP:

*Up to 12 points for projects located within a 2 mile walk/drive of the following ‘desirable activities/characteristics’ (p. 4):*

- *2 points each: national big box merchandise store, hospital, traditional town square which includes an operational anchor institution (e.g., courthouse, city hall) and which serves as a hub for commercial and community activity, grocery store (not convenient store)*

- *1 point each: elementary/middle/high school, public park/community garden, public library, fire or police station, retail/clothing/department store, restaurant, bank (not just ATM), post office, medical facility, pharmacy, church, daycare services, community/recreational facility.*

Excerpt from Massachusetts 2014 QAP:

*Up to 14 points for developments located in areas of opportunity<sup>13</sup>. Up to 8 points for the strength of the public school system; up to 6 points for access to employment (average vehicle miles traveled by commuters ≤5 miles = 6 points, ≤7 miles = 4 points, ≤9 miles = 2 points); 2 points for projects located within 2 miles of community colleges and/or state higher education; 2 points for projects located within 1 mile of a major health care facility (p. 37-8).*

Excerpt from Ohio 2014 QAP:

*Up to 10 points to projects that are near land uses that are positive for the residents<sup>14</sup> (p. 32-33).*

Two of the particular service areas noted in this update are QAPs' explicit prioritization of projects in close proximity to public transportation and/or high quality schools.

Twenty-three of the 52 QAPs reviewed included some scoring preferences for siting near transit, although the majority of these scoring systems award relatively low point values to proximal transit siting. Examples of the more detailed transit-focused provisions include the following:

Excerpt from Arizona 2014 QAP:

*Up to 35 points for transit-oriented design: 15 points if project is located in a certain proximity to frequent bus transit; 20 points if located in a certain proximity to high capacity transit station ("proximity" defined according to day/time and location (Greater Phoenix Area, Tucson, balance of State) - see p. 50) (p. 31).*

Excerpt from California 2014 QAP:

*7 points for projects located within ¼ mile of a transit station, rail station, commuter rail station, bus station, or public bus stop with service at least every 30 minutes during the hours of 7-9 a.m. and 4-6 p.m. Monday-Friday, and the project's density will exceed 25 units per acre.*

Excerpt from Michigan 2013-14 QAP:

*5 points to developments located within 1/10 miles from a public transportation stop (i.e. bus stop). Developments that are creating a public transportation stop within 1/10 miles or have some other form of dedicated, safe, reliable, timely, and regularly scheduled transportation available to all tenants of the development may be eligible for these points upon providing sufficient documentation as determined by MSH-DA (App. p. 2).*

The Louisiana QAP includes the following threshold requirement: [Projects must indicate] *evidence that reasonable transportation services are currently proximate to the site, or if such transportation services are not, a narrative statement of how tenants will access commercial, educational, recreational and other services upon completion of project (LA 2013 p. 14).*

13 DHCD defines an area of opportunity as part of a neighborhood or community with a relatively low concentration of poverty (poverty rates <15%) that also offers access to opportunities such as jobs, health care, high-performing school systems, higher education, retail and commercial enterprise, and public amenities (p. 37).

14 Positive land uses include retail (supermarket with produce, farmers market, clothing store, department store, pharmacy), services (bank, gym, hair care, laundry/dry cleaner, restaurant), and community facilities (licensed adult/senior care, licensed child care, community/recreation center, educational facility, entertainment venue, government office serving public on-site, place of worship, medical clinic, police/fire station, post office, public library, social services center (p. 32).



While proximity to schools was one of the services/amenities frequently listed as a preferred siting location among the 37 QAPs that incentivized siting in high-opportunity areas, less frequently were such preferences made explicit for proximity to *high-quality* schools. Only Indiana and Massachusetts include provisions with relatively high point values for siting near high-quality schools. These were specified in the following provisions:

Excerpt from Massachusetts 2014 QAP:

*Up to 8 points for the strength of the [area] public school system. Points based on the percentage of 10th grade students that score in the Advanced or Proficient categories using an average of the 3 MCAS tests (English Language Arts, Math, and Science/Technology Engineering):  $\geq 90\%$  = 8 points,  $\geq 85\%$  = 6 points,  $\geq 80\%$  = 4 points,  $\geq 75\%$  = 2 points (p. 38).*

Excerpt from Indiana 2014-15 QAP:

*Opportunity area includes proximity to at least 1 assigned public K-12 school with a rating of “A” or “exemplary” or equivalent according to the most recent accounting from the IN Dept. of Education (p. 63). Up to 8 points awarded for projects in close proximity to such schools.*

Lesser point incentives for proximity to high-quality schools are specified in the QAPs for Arizona, Georgia, Louisiana, New Jersey, New York, Texas, and Utah.

New Jersey’s high-performing school preference is enhanced because of that state’s setaside of 60% of LIHTC units in suburban areas – thus, points are awarded for the higher performing school districts within the suburban setaside.

Some examples of how ‘high quality’ schools are defined by these states include: high performance on the most recently available CRCT exam data (i.e., a higher % of students meet or exceed standards) (Georgia); school districts wherein  $\geq 66\%$  of the students are either proficient or advanced proficient on the ASK 4 in both math and language arts (New Jersey); and developments located in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement (Texas).

### C. Contribution to a Concerted Community Revitalization Plan

Although nearly half of the QAPs include point systems that favor developments in Qualified Census Tracts (QCTs) if they contribute to a “concerted community revitalization plan,” fewer (15) provide more explicit details on what this term in the LIHTC statute means, or what should be included in such a plan.

One of the exceptions to this pattern is Indiana, which includes language to prioritize comprehensive community development, a 10% set-aside for projects that are part of a designated Indiana Stellar Community<sup>15</sup>, and additional points for specific revitalization strategies (e.g., neighborhood stabilization through property demolition/redevelopment, investment of resources toward off-site infrastructure improvements).

Similarly, the Nebraska QAP sets aside up to 33% of tax credits to go towards projects that contribute to the CRANE Program (Collaborative Resources Allocation for Nebraska)<sup>16</sup>, in which one of the requirements is for developments that are part of a neighborhood redevelopment plan for which there

15 Indiana’s Stellar Communities Pilot Program is a collaborative effort of INDOT, IHEDA and OCRA seeking to engage two communities to achieve a three-year revitalization strategy. In the revitalization strategy communities identify areas of interest and types of projects, produce a schedule to complete projects, produce cost estimates, identify local match amounts, sources, and additional funding resources, indicate the level of community impact, and describe the significance each project will have on the overall comprehensive revitalization of the community (p. 7).

16 The focus and primary purpose of CRANE is to target specific long-term, interrelated and coordinated job creation/enhancement, economic growth, joint housing and community development strategies and implementation of plans by NE communities (p. 13).

is a significant and material public investment. Kentucky includes a set-aside for developments with significant community impact:

*Funds will be set-aside for developments with significant community impact through the creation of new housing opportunities, acquisition and rehabilitation of vacant or foreclosed property within a defined footprint, or the conversion of vacant or foreclosed buildings within a blighted neighborhood. To be eligible to apply in the Community Impact Pool, the mayor or county judge executive of the jurisdiction must provide a letter detailing the need for the project and address the benefit the project will bring to the community (p. 11). Only one project from the Community Impact Pool will be funded/county (p. 11, 18).*

QAPs that go into more specific details about what should be included within a community revitalization plan include Pennsylvania and Ohio.

The Pennsylvania plan indicates that tax credits should be used to support “broader community revitalization program which has the capability of changing fundamentally the character of a neighborhood, enhancing the lives and amenities available to residents of the community, are focused on implementing a mixed income strategy, and/or which seeks to counteract the pattern through which some metropolitan areas are being segregated by income or race” (PA 2013 p. 7). This plan provides details on how the PA Housing Finance Agency will assess community revitalization programs in measurable terms including how the project will support the construction and rehab of housing to meet the needs of households of all income types (including the very low income); access to public transportation, public parks and open spaces, and community serving enterprises; and expand quality of life and fulfills a

need for health care choices and other crucial service opportunities for residents and the community. The Ohio plan specifies that projects seeking points for development as part of a community revitalization plan must submit a narrative describing the large scale economic development effort, the target area, planned investments in the target area, and a timeline for development (OH 2014 p. 30).

Even QAPs that are relatively weak on community revitalization plan provisions but specify point preferences for projects located in QCTs that contribute to a concerted community revitalization plan typically note that such plans must be in place and approved by multiple layers of stakeholders *before* an application is submitted.

## **II. Affirmative Marketing, Tenant Selection, and Income Targeting**

This second area includes state provisions specifying efforts around affirmative marketing, tenant selection, and outreach to low-income and otherwise vulnerable populations (e.g., populations with limited English proficiency, public housing residents, etc.).<sup>17</sup>

In those states where they are mentioned, affirmative marketing provisions are generally mandated in QAPS as opposed to incentivized through point scoring systems. Some states specify that eligible projects submit an Affirmative Fair Housing Marketing Plan (e.g., Alaska, Illinois, Nebraska, Tennessee), but do not provide any additional clarification on how such marketing should be achieved or specific targeting benchmarks or populations that should be targeted.

Georgia and Michigan includes more specific strategies to be included in the Affirmative Fair Housing Marketing Plan to obtain a maximum point score (see below). Ohio requires a separate affirmative marketing plan for each census tract in which a development is located.

<sup>17</sup> See generally Megan Haberle, Ebony Gayles, and Philip Tegeler, *Accessing Opportunity: Recommendations for Marketing and Tenant Selection in LIHTC and Other Housing Programs* (PRRAC, December 2012), available at [www.prrac.org/pdf/affirmativemarketing.pdf](http://www.prrac.org/pdf/affirmativemarketing.pdf).

Excerpt from Michigan 2013-14 QAP:

*To receive any of the bonus points, development must also contain an agreement to comply with the following requirements<sup>18</sup>: (1) That a continuous outreach program will be conducted to maintain a well-balanced waiting list that will assure the meeting of the affirmative marketing goal at all times; (2) That a housing discrimination disclaimer clause shall be included in any preliminary and/or full application blank. (Pledge not to discriminate against applicants based on their race, sex, age, religion, national origin, familial status, or handicap.); (3) That the handicap logo will be in all advertisements, if the development has barrier free or accessible units; (4) That the MSHDA approved equal opportunity housing slogan or logo (see bottom of first page of Application) will be included in all advertising; (5) That a log of community contacts, daily traffic records, and any other record keeping materials be maintained for inspection, and a copy of the AFHMP will be kept on site; (6) That all fair housing required signs will be posted in designated locations; (7) That the management agent (provide name and firm) has agreed to start the Affirmative Fair Housing Marketing efforts with respect to the “target population” at least 120 days prior to anticipated initial occupancy; (8) That any prospective residential preferences will be identified and made known (p. 19).*

Excerpt from Georgia 2014 QAP:

*At a minimum, Marketing Plans must include: outreach efforts to service providers, homeless shelters, or local disability advocacy organizations in the county where project is located; strategy to affirmatively market to persons with disabilities and the homeless; strategy to establish/maintain relationships between management agent and community service providers; referral/screening*

*process that will be used to refer tenants to the projects, the screening criteria to be used, and reasonable accommodations made to facilitate admittance of persons with disabilities and homeless persons; marketing of properties to underserved populations 2-4 months prior to occupancy; applications for affordable units shall be made available in public locations including at least one with night hours (p. 41).*

The Massachusetts and (to a lesser extent) New Jersey QAPs are explicit about specific racial/ethnic groups to be targeted through affirmative marketing plans. The Massachusetts QAP includes explicit demographic goals for occupancy of low-income units which reflect area racial and ethnic composition whereas New Jersey cites racial/ethnic disparities as one example of how affirmative marketing should be applied.

Excerpt from Massachusetts 2014 QAP:

*All [applicants] should include a detailed plan detailing how they intend to market and attract underserved populations to the project, indicating persons with disabilities and minority households (p. 34). DHCH requires that developers establish affirmative action goals for the percentage of minority participation in each project. Applications must include marketing plans to reach the identified minority groups that are least likely to apply for the housing project being provided (p. 50).*

Excerpt from New Jersey 2013 QAP:

*For projects >25 units, applicants shall submit an Affirmative Fair Housing Marketing Plan, which, in short, documents how the project will be marketed to those people who are least likely to apply. For instance, if the proposed development is located in an area predominantly populated*

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18 From Tab P of application. [http://www.michigan.gov/documents/mshda/mshda\\_li\\_ca\\_25\\_tab\\_p\\_afhmp\\_183881\\_7.pdf](http://www.michigan.gov/documents/mshda/mshda_li_ca_25_tab_p_afhmp_183881_7.pdf) (FN)

*by Caucasians, outreach should be directed to non-Caucasians. Conversely, if the population is predominantly African-American, outreach should be directed to non-African-American groups. At the time the units are placed in service, the owner/developer and rental agent shall certify that the project was affirmatively marketed (p. 36).*

Other QAPs specify affirmative marketing requirements relevant to housing for particular special needs populations, often in partnership with marketing and outreach with area social service agencies. There is some variation in how states define special needs populations but commonly include the elderly, persons with disabilities, homeless individuals and families, and in some cases, families with minor children. Only one state – Rhode Island – includes scoring to incentivize affirmative marketing to non-English speaking populations.

Additionally, over half of the plans reviewed (24) include scoring incentives/requirements to promote Section 8 voucher-holders' and public housing residents' access to tax credit units. In some cases, these provisions are specified through affirmative marketing strategies. Delaware specifies that applicants must market their developments to the local public housing/Section 8 waiting lists (DE 2014 p. 35). Michigan requires projects to submit a written statement outlining how it will make ongoing efforts to request that the PHA make referrals to the project, or place the relevant project information on any listing the PHA makes available to persons on their waiting lists (MI 2013-14 p. 20).

### **III. Reporting standards and additional themes**

This third area, added specifically for the 2014 update, reflects new requirements made under the Housing and Economic Recovery Act of 2008 that

each state tax credit allocating agency provide HUD with information on residents' race and ethnicity. Twenty of the reviewed plans include a provision for annual reports to include tax credit residents' race/ethnicity<sup>19</sup>. It is notable that this mandate is relatively common – appearing in just under half of all reviewed plans – given that underreporting in this area continues to be a challenge. Future analyses should consider whether states that have such reporting mandates in their QAPs do in fact have better race/ethnicity data.

In addition to the areas highlighted above, many state QAPs are focused on supporting a mix of projects that serve a variety of target populations and goals – including elderly, special needs, homeless (if not included under special needs), and families, project allocations that cover both rural and urban areas, allocations that are equitably distributed throughout a state, provisions that favor preservation of existing housing, geographic variation, and/or favoring tax credit developments in areas that have not previously received credits. Relatedly, much attention is given to defining what social support services should be included in a development (staffing, content, etc.) and the types of agreements that should be in place with area agencies to provide these. A more comprehensive review of QAPs focus and targeting of special needs populations is largely outside the scope of this review, but may be a topic for future analyses.

## **IV. Challenges and Barriers**

### **Minimal mention of race**

With the exceptions of the Massachusetts, North Carolina, and Pennsylvania QAPs, QAPs do not include explicit mention of race/ethnicity or segregation patterns by race/ethnicity. QAPs are more frequently explicit about project preferences for strategies that reduce concentration by income and/or geography. While income and/or geographic targeting may have

19 These plans include AK, CT, MA, MD, ME, MT, NH, NJ, OR, PA, RI, TN, UT, WA, WY, and NYC.

implications for racial/ethnic segregation patterns, it is notable that the tax credit plans do not include provisions that are explicit about civil rights practices and implications. Future analyses should consider where and how a more explicit mention of race and ethnicity could strengthen QAPs' impact on desegregation and mobility into high opportunity areas.

## Local Support Requirements

As with the 2008 review, local support continues to factor into many QAPs. Even in the case when QAPs explicitly mention the drawbacks of necessitating local support (MA), the same QAP will allocate points (albeit relatively few) to projects that have obtained local support. Provisions favoring local support beyond the statutory requirements are now typically included in the form of points (as opposed to requirements) and typically highlight one (or both) of the following areas: 1) letters of support or 2) local funding support. Overall, provisions around local support may be getting weaker (shifts to smaller point values instead of requirements) but are not less common in QAPs than they were in 2008.

## Section V: Conclusion

In the aftermath of the Supreme Court's powerful statements about housing segregation in the *Inclusive Communities Project v Texas Department of Housing and Community Affairs* case<sup>20</sup> (which arose from a challenge to the Texas LIHTC Qualified Allocation Plan), and in light of HUD's final rule on "Affirmatively Furthering Fair Housing,"<sup>21</sup> many states will likely be reassessing their QAPs to ensure more

balance in the location of family LIHTC developments, both to promote fair housing and to give low income families with children access to high quality schools and safe neighborhoods.<sup>22</sup>

We hope this survey will provide some helpful examples to states – and advocates – of the kinds of provisions that will help encourage more balanced LIHTC development policies. As HUD's recent report on QAPs suggests,<sup>23</sup> some of these provisions may be more effective than others – for example, actual development set-asides for opportunity areas may yield more units than incremental points for school quality. But in the end it is the overall impact of the QAP that matters,<sup>24</sup> and the state's actual performance both in placing more family units in high opportunity areas, and giving families from high poverty areas meaningful access to those units.<sup>25</sup> All of these goals can be profoundly affected by the state QAP.

## APPENDICES

(Available at [www.prrac.org/projects/buildingopportunity.php](http://www.prrac.org/projects/buildingopportunity.php))

Appendix A: State-by-state Summaries

Appendix B: Most recent final state QAPs (as of 10-31-14)

Appendix C: Recent Developments in Massachusetts and Pennsylvania

For additional PRRAC reports and resources on the Low Income Housing Tax Credit, go to [www.prrac.org/projects/lihtc.php](http://www.prrac.org/projects/lihtc.php).

20 *Texas Department of Housing and Community Affairs v. Inclusive Communities Project*, 135 S.Ct. 2507 (June 25, 2015)

21 "Affirmatively Furthering Fair Housing" (Final Rule), 80 Fed. Reg. 42272 (July 16, 2015).

22 See Raj Chetty, Nathaniel Hendren, and Lawrence F. Katz, "The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Experiment," *The Equality of Opportunity Project* (2014): [www.equality-of-opportunity.org/images/mto\\_paper.pdf](http://www.equality-of-opportunity.org/images/mto_paper.pdf).

23 *Effect of QAP Incentives on the Location of LIHTC Properties* (U.S. Department of Housing and Urban Development, April 2015) available at [www.huduser.org/portal/publications/pdf/QAP\\_incentive\\_mdr.pdf](http://www.huduser.org/portal/publications/pdf/QAP_incentive_mdr.pdf).

24 See Jill Khadduri, *Creating Balance in the Locations of LIHTC Developments: The Role of Qualified Allocation Plans* (PRRAC and Abt Associates, February 2013), available at [http://www.prrac.org/pdf/Balance\\_in\\_the\\_Locations\\_of\\_LIHTC\\_Developments.pdf](http://www.prrac.org/pdf/Balance_in_the_Locations_of_LIHTC_Developments.pdf).

25 See Megan Haberle et al, *Accessing Opportunity: Recommendations for Marketing and Tenant Selection in LIHTC and Other Housing Programs* (PRRAC, December 2012), available at [www.prrac.org/pdf/affirmativemarketing.pdf](http://www.prrac.org/pdf/affirmativemarketing.pdf).

**Strong Positive**

**Moderate/Weak Positive**

**Site and Neighborhood Standards**

A1. <b>Mandatory restrictions</b> prohibiting increases in racial and economic concentration	ME, NC(3), NE, NH, NJ(2), NY, PA, RI(2), TN(2), TX(5), UT	AL(4), AZ(2), CA, IA, IL, KY, MA, TX
A2. <b>Scoring</b> that discourages racial and economic concentration	ND, NH, OH, WY(2)	AK, GA, IN(2), KY, MS(2), NY, OH, OK, OR, TX(3), UT, WV(2), WY
A3. <b>Mandatory requirements or set-asides</b> for development in high-opportunity areas	IL, MD, NJ, PA, VT, WY	
A4a. <b>Scoring</b> that encourage development in high-income areas	AK, LA, MN, NJ	AL, GA, ME(2), NV, OH, VA
A4b. <b>Scoring</b> that encourages development in high-opportunity areas	AL, AZ, CA, GA, IA, LA, MA, MD, ME, NC, OH, PA, RI, SC, VT, WI(2), WY, CHICAGO	AR, AZ, CT(2), DE(3), FL, GA, HI, IA, ID, IL(2), IN, MD, ME(2), MI, MS, MT, NJ(3), NM, NV, NY, OH, OR, SC, SD, UT, WA(3), CHICAGO
A5. <b>Scoring</b> or <b>requirements</b> that preference siting near high-quality schools.	IN, MA	AZ, GA, LA, MD, NJ, NY, TX(2), UT
A6. <b>Scoring</b> that discourages development in distressed neighborhoods.	AL, NC, NH, OH, SC, SD, TX, WY	AL(2), CO, GA, IA, KY, LA(2), MA, MD, ME, MO, NC, NJ, OR, RI, SD, UT
A7. <b>Scoring</b> or <b>requirements</b> that preference siting near transit.	AZ, LA	CA, CO, CT, DE(2), FL, GA, IL, IN, MA, MD(2), ME, MI, NJ(2), NM, NV, NY, UT, VA, VT, WA, CHICAGO
A8. <b>Focus</b> on a neighborhood revitalization plan	IN(2), KS, KY, MA, MD(2), MI, MN(2), NE, NH, NJ, OH(2), PA(2), TN(2), WI(2), CHICAGO	AK, AL, CA, CO(2), DE, GA(3), HI, ID, IL(2), IN, KS, LA(2), MA(2), MD, ME, MN, MO(2), MS, MT, NC, ND, NE, NM, NV(2), NY(2), OH(2), OK, RI(4), SC(2), SD, TN(2), TX, UT, VA(3), WA(3), WI, WV, WY(2), CHICAGO
B1. Local participation in site selection is <b>limited</b> to statutory minimum.	GA, MA(3), OH, PA, WA	ID, MD

**Targeting Standards**

C1. <b>Mandatory requirements</b> ensuring affirmative marketing.	AZ, DE(2), GA, IA, ID, IL(2), MA(2), MD, MI, MO, NE, NJ, OH, RI(2), TN(2), TX, WA	AK(2), AL, CO, LA, MA, MO, ND, NJ, PA, WY
C2. <b>Scoring</b> that incentivizes affirmative marketing.	UT	MN, MS, MT, NM, SC(2), VA
C3. <b>Scoring</b> that incentivizes language access and marketing to non-English speaking applicants.	RI	
D1. <b>Scoring</b> that promotes Section 8 voucher access	CT, ID, IL, UT	AK, AL, AZ, CO, CT, HI(2), KS, KY, LA, NE, NH, NJ, NY, OR, SC, SD, TN, WV, VA, VT, CHICAGO(2), NYC
D2. <b>Requirements</b> for monitoring Section 8 voucher access	AZ, AR, CA, CO, DE(2), IA, MA, MD(2), ME, MI(2), MN, MS(2), NC, ND, NJ, NM, OH, OK, PA, RI, TN(2), WA(2), WI, WY	FL, IN, MT, WY

Positive preference  
(w/out specific  
requirements or scoring)

Strong Negative

Moderate/Weak  
Negative

Not Ranked

AZ(2), NM(2), NV, VT, WY

AZ, CA, DE, MN(2), MD,  
MO, MS, MT, NC, PA,  
WA(2), CHICAGO(2)

AK, OR, RI

NE, TN, TX

CO, IL, MA(5), MD, NV, PA

WV

WI

WV

AK

ID, IL, MA, WY

AR(4), CA, CO, CT, DE, FL,  
IA, IL, IN, KS(3), KY, MD,  
ME, MI(2), MN, MS(2),  
NJ(2), NM, OH(2), OK, PA,  
TN, UT, WI, CHICAGO

AL, AR, AZ(2), CA, CT(3),  
DE, IN(2), KY, LA(3), MD,  
ME, MI(3), MS, MT(2), NE,  
NH, NM, NV(2), OK, OR, RI,  
WA(3), WV(2), NYC

AL, CO, NM, NY, NYC(2)

AZ, CO, FL, UT

AR

AR, CO, FL, IN, MA(2),  
NM, OR, PA, UT, WI

AZ, PA, NYC

AK, AL, AR, AZ, IA, KS(2),  
MD, MI, MO, MT(2), ND,  
NM(2), NV, OH, OK, SD,  
WI, WY

AZ(2), CT, DE, FL, ID, MA,  
MN, MS, MT, ND, NH, NJ,  
NY, OH, OK, OR, SC, SD,  
VA, WA, WI, WV,  
CHICAGO, TX(3), WI(2)

DE

NYC

NM

AK

**Strong Positive**

**Moderate/Weak Positive**

F1. Incentives for larger family units.	AR, CA, KS, MA, MI, MN(2), ND, NH, NJ, WA, WI	AK, AL, HI, ID, IL, MD, ME, MS, MT, NC, NE, NJ, NM, PA, UT, VA
F2. Incentives for targeting families or families with children.	KS, NH, OK, TN, VT, NYC	AR, AZ, CA, DE, FL(2), NH, NJ, NM, NY, OR, SC, SD, UT, VA, WA, WV, WY, CHICAGO
G1. Scoring that promotes units for lowest-income households.	AK, AZ, CA, CO, CT, DE, FL, IA, KS(2), MA(2), MD, ME, MI, MN(3), MS, MT, NC, ND, NE, NH, NV, PA(2), SC, SD, TN(2), TX(2), UT, WA, WI, WY(3), NYC(2)	AR, CT, GA, HI, ID, IL, IN, LA, MA, MD, ME, MI, MN, MT, NC, NE, NH, NJ, NV(2), NY, OH, OK, OR, PA, TN, VA(2), VT, WI, WV

**Reporting Standards**

H1. Racial/demographic reporting requirements.	AK, CT, MA, MD, ME, MT, NH, NJ, OR, PA, RI, TN, TX, UT, WA, WY, NYC	CT, HI, ID, OH
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**Other Standards**

O1. Scoring that promotes units for persons with disabilities.	AK, IA, MN, MO, MS, NC(2), OH, SD, UT, WA, WI	AK, AL, CA, DE(2), FL, GA, IL, IN, LA, MA(2), MI, MT, NE, NJ, NY, PA, SC, SD(2), VA, VT
O2. Scoring that promotes units for special needs populations.	AK, AR, AZ, CA(2), CT, DE, FL, IA, IL, IN(2), KS(2), LA, MA, MD(2), MN(2), NC, ND, NE, NH, NJ, NM, NV, OH, OK, OR, PA, TN(2), UT(2), VT, WA, WI(2), NYC	AK(3), CA, CO, DE, FL, GA, HI, ID, IL, LA, MA, ME, MI, NE, NJ, NY, OR, SD, TX, WA, WV, WY
O3. Scoring to promote home ownership.	CO, IA, KS, MS, NJ, NV, OH, OK, NYC	AK, AL, AR, CA, CT, DE, FL(2), GA, HI, ID, IL, ME, MI, MN, NC, ND(2), NE, NM, OR, SC, SD, TN, VT, WA(2), WI, WV, CHICAGO
O4. Provisions affirmatively furthering fair housing laws.	AK, AR, CA, CO, DE(3), GA, IA, ID, IL, KS, LA, MA(2), MD, ME, MI, MO, MS(2), MT, NC, ND(2), NE(2), NH, NJ(2), NM, NV(2), NY, OH(2), OK, OR(2), PA, RI(2), SD, TN(3), TX, UT(2), VA(2), WA(2), WI, WV(2), WY, CHICAGO, NYC	AR, WV, WY



Positive preference  
(w/out specific  
requirements or scoring)

Strong Negative

Moderate/Weak  
Negative

Not Ranked

MO, NM, OR

CA

AZ, MO, NM, OR, RI(2),  
UT, VT, WI, NYC

MN, MS, NJ, NM

MA

ME, MO(2), NM, OR, RI(2),  
UT, WI, NYC

PA

NM, OR, NYC

MD, MT(2)





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