

When Opportunity Knocks: Working with State Housing Agencies to Promote Desegregation Within the LIHTC Program

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In June 2015, housing advocates across the country breathed a sigh of relief when the U.S. Supreme Court issued its decision in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project*.¹ Justice Kennedy, writing for the majority in a 5–4 decision, affirmed that disparate impact claims are cognizable under the Fair Housing Act (FHA).² Many attorneys will, rightly, remember this case as a landmark civil rights decision. However, the facts underlying *Inclusive Communities* also highlight an important issue regarding the future of affordable housing in the United States: the concentration of Low-Income Housing Tax Credit (LIHTC) units primarily within low-income communities of color and how to thoughtfully address this concentration.

While this issue has been discussed by some for years,³ developments such as the *Inclusive Communities* litigation, as well as the U.S. Department of Housing and Urban Development's (HUD) issuance of its Affirmatively Furthering Fair Housing regulation,⁴ have resulted in broader reflections about the extent to which federal, state, and local actors have fallen short in making affordable housing available to members of low-income communities of color in a way that also promotes access to a range of opportunities, such as high-performing schools and well-paying jobs. And, even when the objective is clear (i.e., ensuring that affordable housing increases access to opportunities), the "how" requires balancing investment in and preservation of existing affordable housing stock within existing low-income communities, as well as an expansion of affordable housing options outside of high-poverty areas. Such reflections have, in turn, given rise to questions about how federal, state, and local government actors can chart a path forward in a way that both acknowledges and remedies past shortcomings while also looking to future investment and policy de-

1. 135 S. Ct. 2507 (2015).

2. *Id.*

3. See e.g., notes 23–25, *infra*.

4. Affirmatively Furthering Fair Housing, 80 Fed. Reg. 42,272 (July 16, 2015) [hereinafter AFFH Rule].

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cisions. This essay explores these considerations within the context of the LIHTC program and outlines ways that various stakeholders have begun thinking about charting that path forward.

I. The Low-Income Housing Tax Credit Program

The LIHTC program is now the largest source of new affordable housing in the United States.⁵ Between 1987 and 2015, this program created more than 45,000 projects consisting of 2.97 million housing units.⁶ According to HUD, the LIHTC program created, on average, more than 1,460 projects containing 110,000 new units each year from 1995 to 2015.⁷ In contrast, due to deep budget cuts, many of the federal housing programs are struggling.⁸ Between 2010 and 2016, the country's public housing budget decreased by \$1.6 billion and the Section 8 Housing Choice Voucher program budget decreased by \$228 million.⁹

Unlike traditional federal housing subsidies, the LIHTC program provides incentives in the form of tax credits authorized by the Internal Revenue Code to build affordable housing.¹⁰ The program authorizes state agencies administering the LIHTC program, often called "state housing agencies" or "Housing Agencies,"¹¹ to allocate approximately \$8 billion in federal income tax credits per year. The Housing Agencies allocate these credits to developers that use them to raise capital for the "acquisition, rehabilitation, or new construction" of affordable units.¹² As a condition to receiving the credits, the properties agree to maintain the units at certain levels of affordability targeted at tenants whose incomes are at or below

5. *Compare Low-Income Housing Tax Credits*, HUD OFFICE OF POLICY DEVELOPMENT & RESEARCH, <https://www.huduser.gov/portal/datasets/lihtc.html> (last revised July 10, 2017) [hereinafter *Low-Income Housing Tax Credits*] with *United States Fact Sheet: Federal Rental Assistance* (2017), CTR. ON BUDGET & POLICY PRIORITIES, <https://www.cbpp.org/sites/default/files/atoms/files/4-13-11hou-US.pdf> [hereinafter *CBPP Fact Sheet*].

6. *Low-Income Housing Tax Credits*, *supra* note 5.

7. *Id.* (citing HUD's *National Low Income Housing Tax Credit (LIHTC) Database: Projects Placed in Service through 2015*, U.S. DEP'T OF HOUS. & URBAN DEV., <https://www.huduser.gov/portal/Datasets/lihtc/tables9515.pdf>).

8. *See generally* CTR. ON BUDGET & POLICY PRIORITIES, *CHART BOOK: CUTS IN FEDERAL ASSISTANCE HAVE EXACERBATED FAMILIES' STRUGGLES TO AFFORD HOUSING* (2016), <https://www.cbpp.org/sites/default/files/atoms/files/4-12-16hou-chartbook.pdf> [hereinafter *CBPP CHART BOOK*].

9. *Id.* at 2–3.

10. *See generally* 26 U.S.C. § 42.

11. *Low-Income Housing Tax Credits*, *supra* note 5. HUD has published a list of Housing Agencies and links to their respective websites, available at https://lihtc.huduser.gov/agency_list.htm.

12. *Id.*

50 percent or 60 percent of the area median income¹³ for at least 30 years.¹⁴ To award new credits, Housing Agencies have extensive application processes involving a Qualified Allocation Plan (QAP).¹⁵ The QAP sets forth criteria for judging development proposals, which Housing Agencies use to determine which projects will be eligible to generate tax credits.¹⁶ Housing Agencies award points to applicants for attributes of their proposed development that incentivize particular goals of the agency, such as agreeing to a longer period of affordability¹⁷ or locating projects close to certain amenities.¹⁸

A. The Duty to Affirmatively Furthering Fair Housing and the LIHTC Program

The LIHTC program must be administered in a manner that affirmatively furthers the aims of the FHA.¹⁹ This mandate is known as the “duty to affirmatively further fair housing,” which describes an obligation that includes taking proactive steps to dismantle patterns of housing segregation within programs and activities administered by the federal gov-

13. Some Housing Agencies require or incentivize even deeper levels of affordability.

14. 26 U.S.C. § 42(h)(6)(D).

15. See 26 U.S.C. § 42(m)(1)(B)(i) (defining “qualified allocation plan” as including, *inter alia*, any plan that “sets forth selection criteria to be used to determine housing priorities of the housing credit agency which are appropriate to local conditions”).

16. Tax credits are either 9 percent (which are very competitive and provide about 70 percent of the funding for a project) or 4 percent (which are less competitive and provide about 30 percent of the funding for a project). 26 U.S.C. § 42 (b). This essay focuses on the allocation of the 9 percent credits.

17. *What Happens to Low-Income Housing Tax Credit Properties at Year 15 and Beyond?*, at 7, HUD OFFICE OF POLICY DEVELOPMENT & RESEARCH, https://www.huduser.gov/portal//publications/pdf/what_happens_lihtc_v2.pdf (last revised Aug. 2012) (noting that, as of 2001, forty-one states either required or gave preference to projects agreeing to longer affordability requirements that range from forty to sixty years, or even in perpetuity).

18. See generally *Effect of QAP Incentives on the Location of LIHTC Properties* (2015), HUD OFFICE OF POLICY DEV. & RESEARCH, https://www.novoco.com/sites/default/files/atoms/files/pdr_qap_incentive_location_lihtc_properties_050615.pdf (noting that states, including Arizona, California, Colorado, Connecticut, Georgia, Massachusetts, Maryland, North Carolina, and Texas, provide additional application points for projects near certain amenities).

19. See generally 42 U.S.C. § 3608(d) (“All executive departments and agencies shall administer their programs and activities relating to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions) in a manner affirmatively to further the purposes of this subchapter and shall cooperate with the Secretary to further such purposes.”).

ernment.²⁰ The obligation to affirmatively further fair housing has its origins in the original text of the FHA. Specifically, the FHA imposes this obligation on “[a]ll executive departments and agencies” to “administer their programs and activities relating to housing and urban development” in a manner that affirmatively furthers fair housing.²¹ The U.S. Department of the Treasury includes the Internal Revenue Service (IRS), which oversees the LIHTC program at the federal level. Accordingly, the Treasury Department and IRS are obligated to administer the LIHTC program in a manner that affirmatively furthers fair housing. Additionally, as recipients of federal housing funds such as Community Development Block Grants, states must certify that they will affirmatively further fair housing.²² State Housing Agencies, therefore, have a key role to play in advancing desegregation goals with respect to affordable housing across the United States. Taken together, this means both federal and state actors

20. As discussed *infra*, in 2015, HUD finalized a regulation requiring certain HUD grantees to use a planning process to evaluate the extent to which the grantees are affirmatively furthering fair housing. See generally AFFH Rule, *supra* note 4. The AFFH Rule preamble notes that the FHA “itself does not define the precise scope of the affirmatively furthering fair housing obligation for HUD’s program participants.” AFFH Rule, 80 Fed. Reg. at 42,274. In fact, the FHA does not define the precise scope of the obligation to affirmatively further fair housing for any government department or agency within its text. Accordingly, it is instructive to refer to what HUD has written about the duty to affirmatively further fair housing. The AFFH Rule preamble states, “Courts have found that the purpose of the affirmatively furthering fair housing mandate is to ensure that recipients of Federal housing and urban development funds do more than simply not discriminate: It obligates them to take meaningful actions to address segregation and related barriers for those protected by the Act, particularly as reflected in racially or ethnically concentrated areas of poverty [footnote].” *Id.* at 42,282 (citing several cases, including N.A.A.C.P. Boston Chapter v. Sec’y of Hous. & Urb. Dev., 817 F.2d 149 (1st Cir. 1987), *Otero v. N.Y. City Hous. Auth.*, 484 F.2d 1122 (2d Cir. 1973); *Shannon v. HUD*, 436 F.2d 809 (3d Cir. 1970)). The AFFH Rule defines “affirmatively furthering fair housing” to mean “taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics.” 24 C.F.R. § 5.152 (definition of “Affirmatively furthering fair housing”). The definition continues, “Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws.” *Id.*

21. 42 U.S.C. § 3608(d) (emphasis added); see also 42 U.S.C. § 3608(e)(5) (obligation of the HUD Secretary to affirmatively further fair housing).

22. See 42 U.S.C. § 5304(b)(2) (requiring that states, as well as local governments, receiving Community Development Block Grant funds certify that they will affirmatively further fair housing).

have obligations to affirmatively further fair housing in the LIHTC program. However, at the federal or state²³ levels, the duty to affirmatively further fair housing has, historically, not been a focus of LIHTC oversight or administration.²⁴ As discussed later in this essay, the relationship between the location of LIHTC units and the ability of families living in those units to access low-poverty, well-resourced neighborhoods has increasingly become a point of interest, focus, and action.

*B. Historic Lack of IRS Oversight Regarding Approval
of Tax-Credit Properties*

Despite the enormity of the LIHTC program, the IRS has provided very little guidance and oversight with respect to program administration, including the obligation to affirmatively further fair housing.²⁵ One of the requirements imposed on Housing Agencies is the requirement to create a Qualified Allocation Plan (QAP) to set priorities and criteria for how the agency will award the credits to incentivize developers to meet the affordable housing needs of their particular state.²⁶ QAPs generally are revised annually when states receive a new allocation of credits.²⁷ Among the limited requirements outlined in the Code for the content of the QAP, the Code requires Housing Agencies to prioritize funding the following: “(I) projects serving the lowest income tenants, (II) projects obligated to serve qualified tenants for the longest periods, and (III) projects which are located in qual-

23. Jill Khadduri, Larry Buron & Carissa Climaco, *Are States Using the Low Income Housing Tax Credit to Enable Families with Children to Live in Low Poverty and Racially Integrated Neighborhoods?*, at 22 (2006) [hereinafter *State LIHTC Report*], http://prrac.org/pdf/LIHTC_report_2006.pdf (“Providing less racially isolated housing opportunities, per se, does not appear to be a priority for states as they administer the LIHTC program.”).

24. *Id.* at 1–2 (“Because it is a tax credit and not a program funded by appropriations and administered by the US Department of Housing and Urban Development (HUD), the Low Income Housing Tax Credit has received less attention than other federal housing programs as a policy tool for expanding choice and promoting racial and economic integration . . . but it has the potential to do so.”).

25. *Id.* at 3 (noting, in report prepared for the Poverty & Race Research Action Council and the National Fair Housing Alliance, the lack of “federal performance standards” for the LIHTC program generally, and that “[w]hether the LIHTC is used for family housing and whether that family housing is in low poverty or low minority areas depends on a combination of state policy priorities and the business and social objectives of the developers of LIHTC housing[.]”) (*id.*). In 2016, the IRS did issue a revenue ruling that referenced the AFFH duty in the context of discussing local approval. This discussion is included, *infra*.

26. 26 U.S.C. § 42(m)(1)(B).

27. Ed Gramlich, *Low Income Housing Tax Credits*, in NATIONAL LOW INCOME HOUSING COALITION, *ADVOCATES’ GUIDE 2017: A PRIMER ON FEDERAL AFFORDABLE HOUSING & COMMUNITY DEVELOPMENT PROGRAMS*, 5-30, 5-33, available at: http://nlihc.org/sites/default/files/2017_Advocates-Guide.pdf.

ified census tracts^[28] . . . and the development of which contributes to a concerted community revitalization plan.”²⁹ The Code also enumerates selection criteria that must be included in the QAP, such as the location of the project, project characteristics (“including whether the project includes the use of existing housing as part of a community revitalization plan”), whether the project accommodates tenant populations of families with children or special-needs populations, and the wait lists for public housing.³⁰

Housing Agencies have significant autonomy and power to determine how to allocate their credits. Such autonomy at the state level historically has contributed to the concentration of LIHTC units being sited in high-poverty, racially and ethnically segregated areas.³¹ The *Inclusive Communities* case also illustrates this problem. The Inclusive Communities Project (ICP) is a Texas-based non-profit that works with low-income families to access expanded housing options in higher opportunity areas.³² LIHTC proj-

28. A “qualified census tract” is defined as “any census tract which is designated by the Secretary of Housing and Urban Development and, for the most recent year for which census data are available on household income in such tract, either in which 50 percent or more of the households have an income which is less than 60 percent of the area median gross income for such year or which has a poverty rate of at least 25 percent.” 26 U.S.C. § 42(d)(5)(B)(ii)(I).

29. The IRS has not issued guidance as to what constitutes a “concerted community revitalization plan.”

30. 26 U.S.C. § 42(m)(1)(C) (stating that the “selection criteria set forth in a qualified allocation plan must include” the following: “(i) project location, (ii) housing needs characteristics, (iii) project characteristics, including whether the project includes the use of existing housing as part of a community revitalization plan, (iv) sponsor characteristics, (v) tenant populations with special housing needs, (vi) public housing waiting lists, (vii) tenant populations of individuals with children, (viii) projects intended for eventual tenant ownership, (ix) the energy efficiency of the project, and (x) the historic nature of the project”).

31. See *State LIHTC Report*, *supra* note 23, at 7, 22 (noting, at 7, that “the proportion of family units in low poverty neighborhoods (less than 10 percent poor) varies markedly among states and among large metropolitan areas,” but also noting, at 22, that “only a few states place more than half their LIHTC family housing in census tracts with minority population rates less than half the rate for the [+250,000 population] metropolitan area.”).

32. Inclusive Communities Project, <https://www.inclusivecommunities.net/> (accessed Jan. 7, 2018) (“The Inclusive Communities Project (ICP) is a not-for-profit organization that works for the creation and maintenance of thriving racially and economically inclusive communities, expansion of fair and affordable housing opportunities for low-income families, and redress for policies and practices that perpetuate the harmful effects of discrimination and segregation. ICP envisions an America where equality is created and sustained in community through access to good schools, affordable housing, safe neighborhoods, and economic opportunity. ICP wants to be a resource to those who share that vision by providing information about where those opportunities exist in the North Texas area, where they don’t, and why. We will work with individuals and families seeking to secure the benefits

ects within the City of Dallas were concentrated in inner city, African American neighborhoods. Specifically, ICP found that from 1999 to 2008, the Texas Department of Housing and Community Affairs—the state’s Housing Agency—approved the development of 37.4 percent of non-elderly LIHTC units proposed to be built in majority-white areas, while approving the development of almost 50 percent of non-elderly LIHTC units proposed to be built in areas with residents who were nearly exclusively people of color.³³ Furthermore, ICP’s analysis also showed that an overwhelming majority of LIHTC units in Dallas (92 percent) were located in majority-minority neighborhoods.³⁴ ICP interpreted this as violating the FHA and brought suit—the suit that eventually would result in the affirmation of disparate impact theory under the FHA.

The same year that ICP prevailed at the Supreme Court, the organization filed another lawsuit—this time against the Treasury Department and the U.S. Office of the Comptroller of the Currency. This more recent lawsuit asserts, *inter alia*, that the defendants fail to meet their duty to affirmatively further fair housing by: (1) “continuing to approve investments in Dallas area LIHTC units located in racially segregated minority areas marked by conditions of slum, blight, and distress”; (2) “refusing to take any action to consider the effect of either the allocation of the LIHTCs or the approval of the investment in LIHTC projects on the racial and socio-economic composition of the surrounding area”; and (3) “refusing to adopt any affirmatively further[ing] fair housing standards relating to improving integrated living patterns, overcoming historic patterns of segregation, and reducing racial and ethnic concentrations of poverty in the LIHTC program.”³⁵

C. Recent Regulatory Developments at the Federal and State Levels

Examining and addressing the concentration of LIHTC units in segregated, high-poverty areas is an issue that has gained increased prominence and attention. The issuance of the AFFH Rule by HUD renewed a broader

of such communities, unfettered by discrimination and prejudice. And we will advocate and promote policies and practices that are consistent with this mission of inclusiveness, fairness, community, and opportunity.”). See also *Inclusive Cmty. Project, Inc. v. Tex. Dep’t of Hous. & Cmty. Affairs*, 749 F. Supp. 2d 486, 492 (N.D. Tex. 2010) (describing the Inclusive Communities Project).

33. *Inclusive Cmty. Project, Inc. v. Tex. Dep’t of Hous. & Cmty. Affairs*, 749 F. Supp. 2d at 499. As the district court pointed out in a footnote, “[t]he distinction between elderly and non-elderly units is salient because the potential tenants of non-elderly LIHTC units are more likely to be minority than the potential tenants of elderly LIHTC units.” *Id.* at 493 n.6.

34. *Id.*

35. First Amended Complaint at 72, *Inclusive Cmty. Project, Inc. v. U.S. Dep’t of Treasury and Office of the Comptroller of the Currency*, 3:14-cv-03013-D (N.D. Tex. Sept. 1, 2015), ECF No. 29. The litigation continues. See generally *Inclusive Cmty. Project, Inc. v. U.S. Dep’t of Treasury*, 2015 WL 4629635 (N.D. Tex. Aug. 4, 2015) (granting in part and dismissing in part defendants’ motion to dismiss); 2016 WL 6397643 (N.D. Tex. Oct. 28, 2016) (same).

conversation about how federal, state, and local governments could both acknowledge and address their respective roles in perpetuating housing segregation through their policies. In fact, the Obama Administration even included in its Fiscal Year 2017 budget documents a proposal—ultimately unsuccessful—that would have added an affirmatively furthering fair housing preference to the QAP process.³⁶ Several developments on the federal and state levels provide helpful context to better understand the current (and future) relationship between fair housing objectives and the LIHTC program.

The first such development was the issuance of the AFFH Rule by HUD in 2015.³⁷ Even though HUD does not oversee the LIHTC program, the discussion surrounding the development of the AFFH Rule is instructive. Readers of this essay are well aware of the longstanding differences in opinion between fair housing advocates seeking to improve mobility options for low-income communities of color to access higher-resource, integrated neighborhoods and advocates for low-income communities who seek reinvestment in historically under-resourced neighborhoods.³⁸ While

36. Mark Shelburne, Novogradac & Co., LLP, *FY 2017 Budget: Affirmatively Furthering Fair Housing as a Required QAP Preference* (Feb. 23, 2016), <https://www.novoco.com/notes-from-novogradac/fy-2017-budget-affirmatively-furthering-fair-housing-required-qap-preference> (citing *Analytical Perspectives: Budget of the U.S. Government, Fiscal Year 2017*, OFFICE OF MANAGEMENT & BUDGET, available at <https://obamawhitehouse.archives.gov/sites/default/files/omb/budget/fy2017/assets/spec.pdf>). The discussion about the proposed AFFH QAP preference can be found on pages 174–75) of the OMB document.

37. AFFH Rule, *supra* note 4. It is important to note that, in January 2018, HUD issued a notice that would delay the submission deadlines for the Assessment of Fair Housing planning document until after October 2020 for local governments. See generally *Affirmatively Furthering Fair Housing: Extension of Deadline for Submission of Assessment of Fair Housing for Consolidated Plan Participants*, 83 Fed. Reg. 683 (Jan. 5, 2018). For various reasons, other HUD funding recipients (such as states and public housing agencies) are also subject to a delayed requirement to complete their Assessments of Fair Housing. However, this essay focuses on the principles outlined in the Obama Administration AFFH Rule and how those principles can be relevant to the LIHTC program. Accordingly, the delay in implementation of the AFFH Rule does not obviate the discussion in this essay.

38. See e.g., Stacy Berger, *Fair Housing and Community Developers Can Work Together*, SHELTERFORCE (Oct. 15, 2015), https://shelterforce.org/2015/10/15/fair_housing_and_community_developers_can_i_work_together/ (noting that “[i]n much of the country, there is an apparent chasm between the community development sector and fair housing advocates,” adding that the “divide has been the subject of numerous recent articles and op-eds, which have generated a wide range of reactions—from some who feel that these articles rightfully bring to light long-running tensions to others who believe the articles are unfairly characterizing either side or unduly exacerbating those same tensions”); Sheila Crowley & Danilo Pelletiere, *Housing Dilemma: The Preservation vs. Mobility Debate*, 2–4 (2012),

this discussion has spanned decades, HUD's development and issuance of its AFFH Rule brought this issue to the fore. Commenters expressed concerns that HUD's proposed version of the AFFH Rule issued in 2013 would effectively foreclose the investment of much-needed resources in communities with racial and ethnic concentrations of poverty.³⁹ In response to these concerns, HUD made changes to the final AFFH Rule that reflects the agency's support for a "balanced approach" to federal investments.⁴⁰ Changes to the final rule included revising the "Purpose" section to include references to the kinds of activities that may affirmatively further fair housing:

A [HUD] program participant's strategies and actions must affirmatively further fair housing and may include various activities, such as developing affordable housing, and removing barriers to the development of such housing, in areas of high opportunity; strategically enhancing access to opportunity, including through: Targeted investment in neighborhood revitalization or stabilization; preservation or rehabilitation of existing affordable housing; promoting greater housing choice within or outside of areas of concentrated poverty and greater access to areas of high opportunity; and improving community assets such as quality schools, employment, and transportation.⁴¹

In doing so, HUD sought to clarify that both place-based strategies and mobility-focused approaches can be consistent with the obligation to affirmatively further fair housing.⁴² While this approach makes sense and is essential for ensuring that no communities are categorically excluded from investment, utilizing a balanced approach is easier said than done. Communities and neighborhoods have distinct needs, and residents of a

National Low Income Housing Coalition, *available at*: <http://nlihc.org/library/other/periodic/dilemma> (providing historical context about the debate's origins).

39. See AFFH Rule, 80 Fed. Reg. at 42,278 ("A substantial number of commenters who expressed support for the rule stated that the proposed rule did not provide a balanced approach to investment of Federal resources. Commenters stated that the proposed rule appeared to solely emphasize mobility as the means to affirmatively further fair housing and, by such emphasis, the rule devalued the strategy of making investments in neighborhoods with racially/ethnically concentrated areas of poverty (RCAPs/ECAPs). They stated that the proposed rule could be read to prohibit the use of resources in neighborhoods with such concentrations.").

40. *Id.* at 42,279 ("To help clarify these issues, in this final rule HUD revises the purpose section (§ 5.150) and the definition of 'affirmatively furthering fair housing' (§ 5.152) to clarify that HUD supports a balanced approach to affirmatively furthering fair housing. In this final rule, HUD has added a new provision describing potential actions or strategies a program participant may take, which is inclusive of both place-based solutions and options to preserve existing affordable housing. Strategies can include increasing mobility for members of protected classes to provide greater access to opportunity.").

41. 24 C.F.R § 5.150.

42. AFFH Rule, 80 Fed. Reg. at 42,279 (noting that "place-based and mobility strategies need not be mutually exclusive").

particular neighborhood or a particular housing development may want different housing options or amenities. In turn, these needs may require different solutions—whether mobility-focused strategies, place-based strategies, or some combination of both. The HUD Assessment of Fair Housing process—a fair housing planning framework established by the AFFH Rule—aims to acknowledge this by envisioning a robust community participation process, as well as the use of locally available data and information as a supplement to HUD-provided data.⁴³ In turn, community participation can inform the goals outlined in the final AFH and influence investment decisions in subsequent planning processes, such as the Consolidated Plan. HUD's work in formulating and implementing its AFFH Rule can be instructive for Housing Agencies in examining ways that they can affirmatively further fair housing within the LIHTC program, while remaining attuned to the needs of residents.

A second relevant development was the issuance of IRS Notice 2016-77, which states, “[p]lacing LIHTC projects in qualified census tracts risks exacerbating concentrations of poverty.”⁴⁴ These qualified census tracts by definition have relatively high rates of poverty.⁴⁵ The notice also acknowledges that “[i]n some cases,” Housing Agencies have given a preference to projects located in qualified census tracts “without regard to whether these projects contribute to a concerted community revitalization plan.”⁴⁶ In other words, Housing Agencies have accorded a preference to projects where the state agency failed to determine if the LIHTC projects being funded were part of an overall plan to invest in aspects of a high-poverty neighborhood beyond affordable housing (e.g., non-housing infrastructure, such as improved sidewalks or transit access). While the notice references the fact that the Treasury Department and IRS have not issued guidance that defines the term “concerted community revitalization plan,” it advises that the preference for projects located in qualified census tracts “fails to apply unless, not later than the allocation, a plan exists that contains more components than the LIHTC project itself.”⁴⁷ Furthermore, the notice expressed the possibility of clarifying the qualified census tract preference in further guidance;⁴⁸ however, with the change in administration, it is unclear whether such guidance will be issued.

The National Council of State Housing Agencies (NCSHA), a national organization of state housing finance agencies, also recently addressed the

43. See generally 24 C.F.R. § 5.154 (Assessment of Fair Housing requirements); *id.* § 5.158 (community participation requirements); see also note 37, *supra*, regarding the delayed implementation of the AFFH rule.

44. I.R.S. Notice 2016-77, at 2.

45. See note 28, *supra*.

46. I.R.S. Notice 2016-77, at 2.

47. *Id.*

48. *Id.* at 2–3 (soliciting comments regarding what should be included in that guidance).

location of LIHTC properties. NCSHA releases yearly recommendations for the administration of the LIHTC program, which are closely followed by many Housing Agencies. In 2017, NCSHA adopted a new recommendation to encourage LIHTC developments in high-opportunity areas, urging Housing Agencies to “develop QAP and/or other program policy documents to facilitate the siting of new affordable housing in diverse locations, including low-distress, low-poverty areas that provide residents with access to various amenities.”⁴⁹ The recommendation recognizes that “[r]esearch shows that locating Housing Credit developments in areas that allow for access to employment, quality schools, transportation options, health care facilities, and other necessary services and amenities, can correlate with stronger long-term life outcomes for assisted households.”⁵⁰ Importantly, the recommendation also notes that “affordable housing also can be a critical catalyst in bringing new opportunities to distressed areas, impacting not only those households who are tenants in that affordable housing, but also households in the surrounding community.”⁵¹ Furthermore, NCSHA states that research has found that LIHTC investment in “distressed areas” can “attract a more racially and income diverse population.”⁵² Thus, the recommendation concludes, agencies should seek to balance LIHTC investments in different communities, “including both areas that already provide access to opportunities and those in which Housing Credit development may help create opportunities.”⁵³

Some Housing Agencies have been utilizing the QAP process to address concerns that the siting of LIHTC properties may perpetuate historic patterns of segregation. For example, the 2017 Texas QAP awards additional points to properties that are located in “opportunity” low-poverty areas that have a poverty rate at or below 20 percent.⁵⁴ In Massachusetts, the 2017 QAP mandates that each new LIHTC project fit into one of four categories, which includes a category for “opportunity locations” that “provide access to opportunities, including, but not limited to, jobs, transportation, education, and public amenities . . . as defined by publicly available data.”⁵⁵ This focus on opportunity areas demonstrates one mechanism in which Housing Agencies can begin to make LIHTC investments outside concentrated areas of poverty.

49. NCSHA *Recommended Practices in Housing Credit Administration*, at 12, NATIONAL COUNCIL OF STATE HOUSING AGENCIES, <https://www.ncsha.org/blog/ncsha-releases-new-recommended-practices-housing-credit-administration> (last revised Dec. 2017).

50. *Id.* at 13.

51. *Id.*

52. *Id.*

53. *Id.*

54. 2017 *Qualified Allocation Plan*, at 19, TEX. DEP’T OF HOUS. & COMMUNITY AFFAIRS, available at: <https://www.tdhca.state.tx.us/multifamily/docs/17-QAP.pdf>

55. *Low Income Housing Tax Credit Program: 2017 Qualified Allocation Plan QAP*, at 4, MASS. DEP’T OF HOUS. & CMTY. DEV., available at: <https://www.mass.gov/files/documents/2017/10/16/2017qap.pdf>.

While substantial autonomy on the part of Housing Agencies to administer the LIHTC program at the state level has contributed to the concentration of LIHTC properties in high-poverty, segregated areas, such autonomy can also provide a path forward to reversing these trends, while also ensuring that areas of historic disinvestment are not categorically excluded from needed future investments. Past experience has demonstrated that Housing Agencies' broad discretion can present an opportunity to advance civil rights objectives in the tax credit program.⁵⁶ For example, effective advocacy has resulted in some Housing Agencies requiring or incentivizing deeper affordability and use restrictions,⁵⁷ creating set asides for special needs populations, and taking measures to ensure properties are complying with the good cause for eviction mandate.⁵⁸

The remainder of this essay examines how California is trying address the historic patterns of siting LIHTC units, how stakeholders had an impact in that process, and what factors Housing Agencies and stakeholders in other states that seek to use the LIHTC program as a means of affirmatively further fair housing should consider. The California example illustrates the importance of ensuring that efforts to advance fair housing aims do not exclude development in low-income communities, which are still in need of investment.

II. California's Approach: A Case Study

The California LIHTC program is the largest in the nation⁵⁹ with over \$88 million tax credits allocated in 2015 and \$92 million allocated in 2016.⁶⁰ California is home to both a diverse population and geographic landscape. The state boasts several large metropolitan areas, over 480 cities, and a significant amount of rural land. Where someone lives within the state can dras-

56. See also note 24, *supra* (identifying LIHTC program's potential).

57. See note 17, *supra*.

58. IRS Revenue Ruling 2004-82 (July 30, 2004) (evictions from LIHTC properties are prohibited absent good cause); *California Resident Notification and Lease Rider*, CAL. TAX CREDIT ALLOCATION COMM., http://www.treasurer.ca.gov/ctcac/compliance/eviction_docs.pdf (California requires a lease rider and notice to notify tenants that they cannot be evicted without good cause.); *State LIHTC Program Descriptions*, NOVOGRADAC & COMPANY LLP, <https://www.novoco.com/resource-centers/affordable-housing-tax-credits/application-allocation/state-lihtc-program-descriptions> (States, including New York, California and Vermont, have set-asides for special needs populations.).

59. See *Federal LIHTC Allocations by State 2016*, NOVOGRADAC & COMPANY LLP (accessed Jan. 7, 2018), <https://www.novoco.com/resource-centers/affordable-housing-tax-credits/application-allocation/2016-federal-lihtc-information-state/>; *Federal LIHTC Allocations by State 2015*, NOVOGRADAC & COMPANY LLP (accessed Jan. 7, 2018), <https://www.novoco.com/resource-centers/affordable-housing-tax-credits/application-allocation/2016-federal-lihtc-information-state/2015-federal-lihtc-information-state/>.

60. *Id.*

tically impact that person's ability to access certain opportunities (e.g., high-performing schools, jobs), and that person's exposure to negative factors (e.g., poor environmental quality, lack of infrastructure). Development of new LIHTC units for low-income families within California has been concentrated in high-poverty, racially/ethnically segregated areas.⁶¹ Although the highest-resource areas of the state comprise 40 percent of the state's census tracts, only 17 percent of new LIHTC units were placed in these areas.⁶² In fact, between 2003 and 2015, a majority (62 percent)⁶³ of all new LIHTC construction was located in the lowest-resource areas⁶⁴ of the state.

In 2016, the California Tax Credit Allocation Committee (CTCAC)—California's Housing Agency—announced plans to amend its regulations governing the QAP to address the over-concentration of LIHTC units in lower-income and more ethnically and racially concentrated neighborhoods. CTCAC proposed new regulations that would effectively bar any new construction of LIHTC units in the lowest-opportunity areas of the state.⁶⁵ The regulations utilized the University of California, Davis Regional Opportunity Index⁶⁶ to determine whether a proposed project was located in a low- or high-opportunity area.

61. Memorandum from Mark Stivers, Executive Director, California Tax Credit Allocation Committee to TCAC Stakeholders, 1 (Aug. 8, 2017) (on file with authors) (“While affordable housing developments can and sometimes do offer opportunities for low-income families with children to access lower poverty, higher resource neighborhoods, *recent analyses have shown that low-income housing tax credit new construction projects targeted to families continue to be sited disproportionately in lower-income and more ethnically and racially concentrated neighborhoods in California.* These neighborhoods often overlap with indices of lesser economic opportunit[y], less access to high quality education, and higher exposure to environmental pollution.”) (emphasis added).

62. Cal. Tax Credit Allocation Comm., Proposed 2017 Regulation Changes with Initial Statement of Reasons, at 7 (last revised Sept. 11, 2017) [hereinafter CTCAC Proposed 2017 Regulations] (on file with authors). Note that for the 2017 Proposed Regulations document, all cited page numbers refer to text that starts on page 1 of the document entitled “2017 Proposed Regulation Change with Reason September 11, 2017” that follows the first seven pages of cover memorandum.

63. This number only represents 9 percent tax credit units.

64. CTCAC Proposed 2017 Regulations, *supra* note 62, at 7. “Resource areas” are defined by CTCAC’s “opportunity maps” methodology, which will be discussed in detail below.

65. *See generally* Cal. Tax Credit Allocation Comm.: Proposed 2016 Regulation Changes with Initial Statement of Reasons (last revised Sept. 15, 2016) (on file with authors).

66. Reg'l Opportunity Index, <http://mappingregionalchange.ucdavis.edu/roi/index.html>, (last visited Jan. 9, 2018). The Regional Opportunity Index is a map and set of data that look at many factors on a statewide level to measure access to economic and social opportunity.

CTCAC's proposal to drastically change existing regulations proved incredibly controversial among developers and affordable housing advocates. Opponents of CTCAC's proposal argued that the Opportunity Index, which examined opportunity on a statewide level, was not an appropriate tool to measure the regional variations within the state. For example, the state's rural areas include a disproportionate number of the lowest resource areas and would therefore be excluded from the siting of new units under CTCAC's proposal. Others criticized the proposal for not considering the political realities of developing in higher opportunity areas, such as NIMBY-ism⁶⁷ with respect to affordable housing. Furthermore, in order to be competitive in California's 9 percent LIHTC application process, a project must show "soft money" in the form of a contribution of land or financial support from a local government entity. Such soft money is very difficult to secure in those high-opportunity areas where constituents are opposed to affordable housing, making it unlikely that tax credits would be allocated to projects in those high-opportunity areas. Given the widespread criticism, CTCAC decided not to adopt its proposed changes to the regulations.

CTCAC remained committed to using its regulations to address segregation in the LIHTC program. The agency, in partnership with the California Department of Housing and Community Development (HCD), began working with a team of independent organizations and research centers to develop a new mapping tool. This new tool would identify "which areas . . . offer low-income children and adults the best chance at economic advancement, high educational attainment, and good physical and mental health."⁶⁸ To account for the regional variations in the state, the tool developers declined to compare data on a statewide level and instead developed eight regional maps. They also developed their own methodology for determining "opportunity."⁶⁹ CTCAC released these new maps in August 2017.

A few weeks later, CTCAC released its second proposal for regulatory changes to the QAP.⁷⁰ Instead of imposing an overall ban, the proposed regulations included a 30 percent cap on projects in low-resource areas, excluding projects that would primarily be replacing existing projects because they are more akin to a rehabilitation project.⁷¹ The regulations also

67. NIMBY-ism stands for "Not in my backyard," and refers to people that oppose a new development because it is in or near their neighborhood.

68. *Revised Opportunity Mapping Methodology*, at 1, CAL. FAIR HOUS. TASKFORCE (updated Dec. 2017), available at: <http://www.treasurer.ca.gov/ctcac/opportunity/methodology.pdf> (last visited Jan. 9, 2018) [hereinafter *Mapping Methodology*].

69. The indicators considered were poverty, adult education, employment, job proximity, median home value, environmental factors including pollution burdens, math and reading proficiency, high school graduation rates, student poverty rate, along with a filter regarding poverty and racial segregation. See *Mapping Methodology*, *supra*, note 68.

70. CTCAC Proposed 2017 Regulations, *supra* note 62.

71. *Id.* at 6.

proposed awarding points to projects in the high- or highest-resource areas, as defined by the new opportunity maps,⁷² and a significant number of additional points for projects in these areas in the event that there is a tie in determining which projects would receive allocations of tax credits.⁷³

The response to these proposed changes varied.⁷⁴ While the maps were produced on a regional basis, developers and advocates still had concerns regarding the effectiveness of CTCAC's methodologies for determining opportunity in rural areas. Even under the new proposed framework, large portions of rural counties were categorized as low-or lowest-resource areas. Additionally, the 30 percent cap on new projects in low/lowest-resource areas was not a set-aside; while 30 percent of projects could be located in these areas, they were not required to be.⁷⁵ This fact led to concerns that the proposed changes would exacerbate decades of disinvestment and segregation because there would be little incentive to develop in these areas. Advocates and developers also pointed out that there are differences in what types of opportunities exist within rural and urban/suburban areas. For example, while rural areas "may lack public transportation and significant commercial development," these areas are "close to the agricultural jobs that employ many of the residents of these communities."⁷⁶ Additionally, some of the opportunity amenities located in high/highest-resource areas may not be accessible to low-income tenants, despite their proximity, such as private schools and high-end grocery stores.⁷⁷

CTCAC made several changes to the mapping methodology in response to these concerns. For example, the agency removed rural areas from the regional maps and created a rural statewide map so that rural areas would no longer be compared with the urban and suburban communities in the regional maps. This resulted in an increase of high- and highest-resource tract designations from 135 to 399 and a three percent decrease in tracts designated as lowest resource. CTCAC also made changes to the opportunity indicators by considering regional medians for job proximity and eliminating consideration of commuting times. The regulations were adopted on December 13, 2017.⁷⁸

72. *Id.* at 30.

73. *Id.* at 44.

74. Cal. Tax Credit Allocation Comm., Public Comments Received During Hearings and Public Comment Period (Nov. 30, 2017) (on file with the California Tax Credit Allocation Committee), *available at* https://www.novoco.com/sites/default/files/atoms/files/ca_2017_public_comment_matrix_113017.pdf.

75. *Id.* at 3.

76. *Id.*

77. *Id.* at 4.

78. Cal. Tax Credit Allocation Comm.: Regulations Implementing the Federal and State Low Income Housing Tax Credit Laws, California Code of Regulations Title 4, Division 17, Chapter 1, <http://www.treasurer.ca.gov/ctcac/programreg/2017/20171213/clean.pdf> (last visited Jan. 22, 2018).

III. Considerations for Housing Agencies Seeking to Take Their Obligation to Affirmatively Further Fair Housing . . . Further

California's approach leaves much to learn from and to consider when addressing the historic segregation of LIHTC properties. This process exemplifies the tension between creating housing choice in high-opportunity areas and the need for continued investment in historically segregated and distressed communities. It also illustrates the necessity of fashioning solutions regionally—as a “one size fits all” approach is not effective—as well as the importance of Housing Agencies truly taking into consideration public input from community stakeholders. In light of the ongoing work in California, what strategies and best practices should advocates and stakeholders across the country consider?

A. Considering Regional Variations When Developing a Methodology

Given the regional variations of most states, a nuanced and balanced approach that increases housing opportunities in higher-resource areas while continuing investment in lower-resource areas is essential to avoid further perpetuating segregation and reinforcing its effects. As exemplified in California, placing a vast majority of resources in projects in high-resource areas may have the unintended consequence of harming residents in lower-resource areas. Accordingly, an approach that works in one area may not be appropriate for another. Housing Agencies must look at particular regional variations in their states to develop a methodology appropriate to specific regional characteristics and needs. Regional considerations are also at the crux of the Assessment of Fair Housing (AFH) process, which includes a required regional fair housing analysis.⁷⁹

It is also imperative for Housing Agencies to utilize data and indicators that reflect the realities of opportunity resources in these areas and to allow stakeholders to appeal and supplement this data if they are concerned the designation is incorrect. For example, California's opportunity maps initially used commute times and job proximity as indicators. However, these indicators were subsequently removed when advocates pointed out that longer commute times in rural areas are inevitable, given that many of these jobs are with the agricultural industry.

B. Utilizing Community-Based Data

Housing Agencies must find ways to consider real-time conditions, such as gentrification. However, these conditions are rarely captured contemporaneously by traditional data sources such as Census data. Community-based data derived from interviews, focus groups, and surveys of local residents can reveal the actual utility of neighborhood amenities, as well as

79. See e.g., 24 C.F.R. § 5.154(d)(2) (outlining the HUD AFH analysis, which includes the identification of fair housing issues within both the jurisdiction and region). See also note 37, *supra*, regarding the delay of the AFFH Rule's implementation.

impediments to opportunity.⁸⁰ Such data also can reveal amenities not reflected in traditional data sources, such as pop-up food markets and informal financial assistance (such as aid from local churches, mosques, synagogues, and other faith-based organizations).⁸¹ This information also is essential to prevent the displacement of low-income communities of color from areas that are providing access to employment, educational, and other opportunities. The importance of community-driven data can be seen in the adoption of HUD's AFFH Rule, which requires that HUD grantees completing the AFH planning process supplement HUD-provided data and maps with available "local data"⁸² and "local knowledge."⁸³ HUD also requires that its grantees solicit community input as part of the AFH process.⁸⁴ In fact, failure to comply with community participation requirements is cited as grounds for HUD's refusal to accept a grantee's AFH.⁸⁵

*C. Encouraging Investment in High-Resource Areas Without Causing
Disinvestment in Lower-Resource Areas*

One key criticism of California's proposed regulations is that because they created a framework in which such a large amount of application points are awarded to projects in high-resource areas, projects in low-resource (primarily rural) areas would be completely unable to compete for allocations of tax credits.⁸⁶ While such a framework would certainly

80. See Letter to Mark Stivers, Executive Director, CTCAC, from National Housing Law Project, et al. re: CTCAC Proposed Regulation Changes, at 3 (Oct. 30, 2017) (letter from several advocacy organizations regarding proposed CTCAC regulations) (on file with authors) [hereinafter *Advocates' Letter*].

81. *Id.*

82. See 24 C.F.R. § 5.152 (defining "local data" as referring to "to metrics, statistics, and other quantified information, subject to a determination of statistical validity by HUD, relevant to the program participant's geographic areas of analysis, that can be found through a reasonable amount of search, are readily available at little or no cost, and are necessary for the completion of the AFH using the Assessment Tool").

83. See 24 C.F.R. § 5.152 (defining "local knowledge" as referring to "information to be provided by the program participant that relates to the participant's geographic areas of analysis and that is relevant to the program participant's AFH, is known or becomes known to the program participant, and is necessary for the completion of the AFH using the Assessment Tool"); 24 C.F.R. § 5.154(d)(2) ("Using HUD-provided data, local data, local knowledge, including information gained through community participation, and the Assessment Tool, the program participant will undertake the analysis required by this section.").

84. See generally 24 C.F.R. §§ 5.154, 5.158; see also note 37, *supra*, regarding the delay of the AFFH Rule's implementation.

85. 24 C.F.R. § 5.162(b).

86. Cal. Tax Credit Allocation Comm.: Proposed 2017 Regulation Changes with Initial Statement of Reasons (last revised Sept. 11, 2017), § 10325(c)(4)(A)11 (proposes to award eight additional amenity application points to projects in the highest-

encourage development in high-resource areas, communities that are historically in need of investment will be left behind. Instead of using application points to prioritize these projects, Housing Agencies could create a set-aside for projects in high-resource areas. Doing so would incentivize construction of projects in high-resource areas while not creating an insurmountable bar for low-resource communities to receive much-needed affordable housing investment.

Another important consideration for Housing Agencies is to avoid implementing a policy that discourages rehabilitation and reinvestment in existing LIHTC units. California addressed this concern by exempting projects that are replacing 75 percent or more existing units. This exemption was proposed because CTCAC recognized that these projects are essentially rehabilitating existing projects and did not want to discourage reinvestment and rehabilitation of current tax credit properties.⁸⁷

D. Eliminating Requirements for “Soft Money”

One of the largest barriers to creating development in high-resource areas is that current residents and accordingly, local governments, oppose development of housing for low-income residents within their communities. However, many Housing Agencies give preference to projects that receive some form of local government contribution, such as financial resources or land. This gives local governments ammunition to bar or greatly decrease the chances of projects in their areas being funded.

The IRS recently addressed this issue with the release of Revenue Ruling 2016-29.⁸⁸ The ruling clarified that the Code does not require or encourage local approval for new LIHTC properties. The ruling goes on to recognize that requiring local approval may violate the Fair Housing Act and the duty to affirmatively further fair housing—as projects in high-minority and low-opportunity areas tend to get significantly more local support than projects in high-opportunity areas, thereby “perpetuat[ing] residential racial segregation.”⁸⁹ As a means of encouraging development in high-resource communities, state Housing Agencies should consider eliminating such preferences.

resource areas and four points to projects in high-resources areas); § 10325(c)(9)(B) (proposes to award 5 to 20 additional tie breaker percentage points to projects in highest-or high-resource areas); § 10315(h) (proposes a 30 percent cap (not a set-aside) for projects in low-resource areas).

87. Cal. Tax Credit Allocation Comm.: Proposed 2017 Regulation Changes with Initial Statement of Reasons (last revised Sept. 11, 2017), § 10315(h).

88. Rev. Rul., 4-6, 2016-29.

89. *Id.* at 3-4.

E. Ensuring Developments in High-Resource Areas Are Available to a Diverse Applicant Pool

As high-resource areas often have been resistant to building affordable housing—particularly housing that would serve people of color or people with disabilities—Housing Agencies must take steps to address not only the siting of the properties, but also the extent to which communities of color and other groups that have historically experienced housing discrimination can access these units. Without proper oversight, properties in high-resource areas may steer particular applicants to other properties or may only try to serve less “controversial” populations (e.g., the elderly).⁹⁰

Housing Agencies should require that LIHTC properties, especially in high-resource areas, affirmatively market their properties in order to attract a diverse pool of applicants.⁹¹ A 2012 policy brief by the Poverty & Race Research Action Council found that while many Housing Agencies have affirmative marketing provisions, “[a] relatively small number of states issue substantive marketing requirements.”⁹² In order to ensure compliance, Housing Agencies should require that properties produce written and detailed outreach plans and report on specific marketing activities.⁹³

Additionally, there are currently no mandates for LIHTC properties to have written and transparent admissions policies. Thus, even if a property attracts diverse applicants, non-transparent and informal admissions policies may result in screening out certain applicants.⁹⁴ Relatedly, Housing Agencies must take significant steps to ensure that managers of LIHTC properties receive appropriate training⁹⁵ and oversight regarding their obligations during the admissions process under fair housing law.

90. See Advocates’ Letter, *supra* note 80, at 3.

91. See *Civil Rights Best Practices in the Low Income Housing Tax Credit Program*, at 8–10 (updated 2015), POVERTY & RACE RESEARCH ACTION COUNCIL, available at: <http://www.prrac.org/pdf/BuildingOpportunityII.pdf> (examples of states with affirmative marketing requirements in their QAPs); see also Megan Haberle, Ebony Gayles & Phil Tegeler, POVERTY & RACE RESEARCH ACTION COUNCIL, *Accessing Opportunity: Affirmative Marketing and Tenant Selection in the LIHTC and Other Housing Programs* (Dec. 2012) [hereinafter *Accessing Opportunity*], <http://www.prrac.org/pdf/affirmativemarketing.pdf>. Appendix B of that report includes a state survey of QAPs and their tenant selection and affirmative marketing provisions. Appendix B is available at: <http://www.prrac.org/pdf/AffirmativeMarketingAppendixB.pdf>.

92. *Accessing Opportunity*, *supra* note 91, at 24.

93. For one proposal on how to build on current HUD affirmative marketing requirements to create plans and metrics in the LIHTC context, see generally *id.* at 30–32. See *id.* at 46 (recommending Housing Agencies require housing developers to have a “written tenant selection plan for annual review”).

94. *Id.* at 41 (noting that “[w]here landlords do rely on credit scores and other background information, this process should be transparent for tenants.”).

95. *Id.* at 28 (recommending staff training regarding both marketing and tenant selection).

IV. Conclusion

This essay aims to continue a conversation about how Housing Agencies, housing and civil rights advocates, residents, affordable housing developers, jurisdictions, and other stakeholders can search for creative approaches to lessen the impacts of segregation, which have been reinforced through the siting of LIHTC units. However, this worthy goal cannot be accomplished at the expense of low-income communities of color, which also need investments for those families who want to see their communities improve. Finding this balance is admittedly quite daunting when taking into account the competing needs and differing circumstances that exist in communities that range from small, rural areas to large cities and suburbs. That said, the increased interest and willingness to address this issue signifies an important sea change within the LIHTC program to ensure the diverse needs of low-income families and communities are met.