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Department of Housing and Community Development
1800 Martin Luther King, Jr. Ave, SE
Washington, D.C. 20020

Comments for Rules on Tax Abatement for Affordable Housing in High-Needs for Affordable Housing Areas Rules

Via Electronic Mail: regs.dhcd@dc.gov

Required Email Subject: Comments on HANTA Proposed Rules

Dear Director Donaldson:

Thank you for the opportunity to comment on the Department of Housing and Community Development's (DHCD or the Department) proposed Tax Abatements for Affordable Housing in High-Needs Areas (HANTA) regulations. DCFPI is concerned that the affordability level set in the law and enforced through the regulations is not sufficiently affordable to justify the use of District dollars. The program is not only poorly targeted, it also fails to set a limit on the subsidy amount per affordable unit and does not adequately define the criteria by which projects will be assessed in the competitive process.

DCFPI recommends requiring a transparent competitive process focused on creating strong preferences for projects serving lower income families (under 50 percent of family median income, or FMI) and for projects that have units with multiple bedrooms. With that said, DCFPI was pleased to see that the authority for the administration of this program moved from Deputy Mayor for Planning and Economic Development to DHCD. We believe that DHCD, which administers the District's competitions for affordable housing funds, is the right agency to administer this competitive process and to monitor enforcement.

6401 Abatement Cap and Availability

The proposed regulations state that an individual development may receive up to 25 percent of the annual total abatement amount authorized for all developments in a given fiscal year. Given that the intention of this abatement is to incentivize development of affordable housing in areas with high needs for affordable housing, DCFPI strongly supports allocating abatement amounts in proportion to the affordability level of each development. If a project has more affordable units at more affordable levels, that project should receive a larger abatement.

While the law sets a cap on the total abatement level per individual development, it fails to set a limit on the subsidy level per unit. This should be of concern because the abatement amount per affordable unit could be very high and a bad deal for taxpayers—for example, if a development gets a 100 percent abatement but

is only building a small share of affordable units despite meeting the building requirements, then the per-unit subsidy would be costly. To avoid this possibility, the regulations should specify a per-unit subsidy limit and develop a sliding scale based on whether the unit is for tenants earning 30 percent AMI, 50 percent AMI, or 80 percent AMI.

6402.1 Requirements for Tax Abatement

As written, the law allows the District to administer tax abatements to projects where at least one third of the housing units developed or redeveloped are affordable to and rented by households earning on average 80 percent or less of the MFI, and that no household renting an affordable unit earn more than 100 percent of the MFI. DCFPI remains concerned that the affordability level set in the law and enforced through the regulations is not sufficiently affordable to justify the use of District dollars. As reflected in our comments on section 6403.3, DCFPI strongly urges DHCD to mandate and use the competitive process to prioritize projects that meet the standard requirements and designate at least half of the required number of affordable units in each project to tenants earning at or below 50 percent and 30 percent of the median family income.

6403.3 Application; Competitive Process

DCFPI recommends that the proposed regulations require a competitive process as allowed by law and indicate the criteria DHCD must use to award abatements and how much abatements will be. We suggest that DHCD clearly state how projects will be adjudicated and prioritize projects based on the following criteria:

- Projects that include affordable units with three or more bedrooms;
- Projects that include units for tenants earning below 50 percent or 30 percent AMI;
- Projects with more affordable units at lower affordability levels (i.e., projects with lower affordability averages across *both* of these metrics than what is statutorily required); and,
- Projects with a lower estimated rate of return.

6403.4 Application; Competitive Process

The proposed regulations require developers to include a calculation of the annual dollar amount of tax abatement being requested and to show financial need in their tax abatement applications. DCFPI recommends that the regulations clearly define financial need and specify a formula to determine whether or not an application meets that definition. We also recommend that the regulations cap the number of years that a property can receive the abatement once developers no longer have a financial need during the life of the property/abatement.

The proposed regulations state that a copy of the agreement the developer executed with DSLBD requiring the developer to contract with certified business enterprises be included if applicable. The CBE agreement is required so the proposed regulations should modify this sentence to include some evidence that the developer plans to comply with CBE requirements.

6403.5 Application; Eligibility Outside of Competitive Process

The proposed regulations allow DHCD to issue a pre-construction conditional eligibility determination stating that the development, as proposed, may qualify for an abatement (subject to the availability of appropriated funds). DCFPI recommends that the regulations specify the reasoning for pre-conditional eligibility and require DHCD to be publicly transparent about the process of awarding conditional eligibility. DCFPI also recommends that the proposed regulations and DHCD consider incentivizing deeper levels of

affordability by limiting pre-construction conditional eligibility determinations to projects that contain units affordable to tenants earning at or below 30 percent and 50 percent of the median family income.

In addition to the listed minimum requirements for a request for determination, DCFPI recommends that developers be required to present plans toward meeting future First Source Agreement and certified business enterprise contract requirements.

6407.1 and 6407.2 Noncompliance

The proposed regulations state that DHCD will determine whether a development has become ineligible for the tax abatement by not complying with the recorded covenant. The minimum requirements in the affordability covenants, as detailed in section 6405.2, do not include confirmation that developments met First Source Agreement and certified business enterprise contract requirements. As a result, DCFPI recommends that this ineligibility language in 6407 be clarified to explicitly include violations against First Source Agreement and certified business enterprise contract requirements - not just violations against affordability.

The proposed regulations also state that developments in noncompliance shall be ineligible for the abatement on the first day of the tax year following the date when the ineligibility occurred. This ineligibility should apply for all future tax years for the project, and DHCD should take a history of noncompliance into consideration before making future property tax abatement awards to developers. And, developers should have to repay the abatement for the year that they were out of compliance.

We thank you again for the opportunity to submit these comments. Please do not hesitate to contact us (dcrawford@dcfpi.org and egolding@dcfpi.org) with any questions.

Sincerely,

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