

March 23, 2012

Peter M. Rogoff  
Administrator, Federal Transit Administration  
U.S. Department of Transportation  
1200 New Jersey Ave SE  
Washington, DC 20590

**RE: Docket Number FTA–2010–0009, New Starts and Small Starts Program**

**Notice of Availability of Proposed New Starts/Small Starts Policy Guidance**

Dear Administrator Rogoff,

On behalf of Enterprise Community Partners, Habitat for Humanity International, Local Initiatives Support Corporation (LISC), and the National Housing Conference, we are pleased to submit these comments on the Federal Transit Administration's (FTA's) proposed policy guidance for the New Starts / Small Starts Program.

As noted in comments filed under separate cover, we strongly endorse the approach that FTA has taken in the proposed New Starts / Small Starts rule to integrate affordable housing considerations within the economic development and land use sections of the project justification.

Through this letter, we request that FTA provide additional guidance on how these provisions will be implemented when it finalizes its proposed policy guidance. Specifically, we recommend that FTA clarify:

- A. The definition of the term "**publically supported housing**" as that term is used within the land use section of the project justification criteria and,
- B. The standards that FTA will use to judge whether an applicant has policies in place to "**support maintenance of or increases to the share of affordable housing in the project corridor**" under the economic development section of the project justification criteria.

Specific recommendations on each issue are provided below.

**A. Defining "Publically Supported Housing" in Land Use Section.**

As part of the process of evaluating whether a proposed New Starts / Small Starts project has supportive land use policies and patterns, FTA proposes to examine the presence of "existing publically supported housing in the corridor." This is one of five measures included in the land use section of the project justification described in Appendix A to Part 611 of the proposed rule. (See Sections A(1)(e)(5) and B(1)(b)(5).)

We support this provision as it will help ensure that low- and moderate-income families have access to public transit, helping to advance the statutory goals of the New Starts program (see above) and reduce families' combined costs for housing and transportation. We appreciate that FTA has used terminology that will permit consideration of both traditional federally-supported public housing as well as other affordable housing developments subject to long-term affordability restrictions.

To give clarity to applicants, we recommend that FTA define the term “publically supported housing” in its guidance. Our recommendation would be to define it as follows:

“Publically supported housing’ is measured based on the number of units that are occupied or available-for-rent and defined to include the following three categories of existing affordable housing developments:

1. Federally- or state-supported public housing
2. a rental housing development (or a portion of a larger rental, mixed use or mixed tenure development) that is legally restricted to occupancy by households who, at time of initial occupancy, have incomes that are at or below a fixed income limit (which may not be higher than 80 percent of the area median income)<sup>1</sup> AND satisfy one or both of the following requirements:
  - Is owned by a nonprofit organization dedicated to providing affordable housing or
  - Is governed by a legally binding use restriction requiring the housing (or the land upon which it operates) to be used to provide affordable housing for 15 years or longer, as measured from the time of the New Starts / Small Starts application.<sup>2</sup>
3. An owner-occupied development (or a portion of a larger owner-occupied, mixed use or mixed tenure development) that is legally restricted to occupancy by households who, at the time of initial occupancy, have incomes at or below 100 percent of the area median and meets the definition of “long-term affordable housing” described below, under Economic Development.”

## **B. Clarifying the Criteria Used to Evaluate Affordable Housing Policies under the Economic Development Section**

To measure the economic development contribution of proposed New Starts and Small Starts projects, the proposed rule would examine:

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<sup>1</sup> Legislation has been proposed to allow Low-Income Housing Tax Credit programs to focus on the average income of residents, allowing some to have incomes above 60% of AMI so long as others have incomes below 60% of AMI. The guidance should specifically provide that Low-Income Housing Tax Credit developments satisfy the income test automatically, even if this legislation were to pass. However, such developments should still be required to demonstrate a long-term use restriction or nonprofit ownership.

<sup>2</sup> For purposes of qualifying existing affordable rental housing, we have focused on use restrictions that last for at least 15 years from the time of the New Starts application to account for the fact that the developments may have been built in different years, and thus have used up some of their required affordability periods. By contrast, in evaluating policies designed to encourage the development of new affordable rental developments near transit (see below under Economic Development) we focus on the current standard of 30 years of affordability, as provided by the combination of 15-year compliance period and 15-year extended use period minimum in the Low-Income Housing Tax Credit program.

The extent to which a proposed project is likely to enhance additional, transit supportive development based on the existing plans and policies to support economic development proximate to the project including:

- (i) Growth management plans and policies;
- (ii) Policies in place to support maintenance of or increases to the share of affordable housing in the project corridor; and
- (iii) Performance and impact of policies.

Sections A(l)(f)(1)(ii) and B(1)(c)(1)(ii) of Appendix A to Part 611 of the proposed rule.

We support the way FTA has defined the economic development contribution of planned projects which will help advance two fundamentally important outcomes:

- more intensive development around planned transit stations, which will maximize the economic impact of the stations and reduce vehicle miles traveled.
- the establishment of incentives for jurisdictions within the transit corridor to preserve existing affordable housing and ensure that affordable housing is included within any new residential development that takes place in close proximity to the stations. These policies will help ensure that families of all incomes have equitable access to transit and the economic benefits of the development that takes place around the planned stations. The policies will also help increase ridership for public transit by increasing the population of low- and moderate-income families who have good access to it.

To help guide communities interested in applying for New Starts or Small Starts funding, we recommend that FTA clarify in the guidance the criteria it will use to evaluate the extent to which communities have “Policies in place to support maintenance of or increases to the share of affordable housing in the project corridor.”

Specifically, we recommend that FTA measure this criterion by adding up points for two sub-factors:

- 1. Affordability of New Residential Development Near Transit Stations**
- 2. Preservation of Existing Affordable Housing and Development of New Deeply Subsidized and Affordable Housing**

**1. Proposed Factor: Affordability of New Residential Development Near Transit Stations**

The purpose of this rating factor is to ensure that communities adopt a policy of ensuring that a share of new development within one-half mile of new station stops is affordable to moderate-income families. This factor focuses on moderate-income families to ensure it encompasses a wide range of housing policy solutions, including strategies that require little or no cash outlays by communities. The next rating factor (discussed below) gives jurisdictions credit for adopting strategies to ensure that extremely low- and very-low income families can afford to live in some of these units or in other developments.

Among many possible strategies for ensuring that a share of new development is affordable to moderate-income families, communities may:

- use publicly owned land to develop affordable housing;
- require a share of proceeds from tax increment or tax assessment districts to be used for affordable housing near the proposed stations;
- adopt voluntary or mandatory inclusionary housing policies that require or offer incentives for the inclusion of affordable housing within new market rate development;
- offer density bonuses, reducing parking requirements or expedited permitting to owners that agree to meet affordable housing standards;
- use federal, state or local housing subsidies for development near proposed transit stations;
- adopt an employer-assisted housing policy; or
- use community land trusts or other shared equity homeownership mechanisms.

Given the many alternative approaches for achieving this outcome, we recommend focusing on incentivizing the *outcome* of ensuring that a significant share of new development is affordable, rather than any specific *means* to the outcome. All options can and should be allowed so long as they are reasonably likely to lead to the desired outcome.

The Appendix spells out in detail our proposed measurement and scoring for this rating factor. Several key policy decisions informed the design of the rating factor:

- **Income targets.** Our proposed rating factor focuses on creating incentives to ensure that a share of new residential development is affordable to owners with incomes at or below 100 percent of the area median income and renters with incomes at or below 60 percent of the area median income. In areas where rents are high relative to incomes, we would give jurisdictions credit for rental housing affordable to families with incomes up to 80 percent of the area median income.<sup>3</sup> These targets are generally recognized as achievable with policies such as tax increment set-asides, low-income housing tax credits, and inclusionary zoning, and do not generally require ongoing operating subsidies to maintain.

To achieve deeper affordability for the lowest-income families, ongoing operating subsidies are likely to be necessary. Our second rating factor, below, focuses on creating incentives for communities to preserve existing affordable rental housing and target their supply of ongoing operating subsidies to units near planned stations to help ensure affordability to the lowest-

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<sup>3</sup> We would suggest that for station areas where the median gross rent of units within one-half mile of the proposed station exceeds 30 percent of the income of a household at 70 percent of the metro area median income, communities may receive credit for rental units affordable to families with incomes up to 80 percent of the metro area median income.

income families.

- **Long-term affordability.** The federal investments in new transit lines and stations are intended to provide lasting, permanent transportation solutions. To ensure that low- and moderate-income families have continual access to affordable housing within walking distance of transit, it is essential therefore that communities plan for long-term affordability. Because land prices near transit are expected to rise over time, it is likely to be prohibitively expensive to replace any affordable housing units that are lost due to expiring affordability restrictions. For this reason, we would give jurisdictions credit only for housing that comes with covenants or other restrictions ensuring it remains affordable over the long term. (See definition of long-term affordable housing in the Appendix.)
- **Areas of poverty concentration.** Where poverty concentration is high and both rents and home prices are low, we may not want to encourage the creation of additional affordable housing. For this reason, our proposed rating factor allows jurisdictions that propose stations in such areas to obtain credit under the rating factor without pledging to reserve a share of new residential development for affordable housing.

## **2. Preservation of Existing Affordable Housing and Development of New Deeply Subsidized and Affordable Housing**

The first rating factor, discussed above, provides incentives for communities to adopt policies designed to ensure that a share of new development is affordable to moderate-income families. Many families in need of affordable housing, however, have much lower incomes. This second rating factor evaluates the commitment of applicants to preserving existing affordable housing and expanding deeply affordable housing for the lowest-income families (i.e., families with incomes at or below 30 percent of the area median income) near proposed station stops.

The Appendix spells out this proposed rating factor in greater detail.

We very much appreciate consideration of these recommendations whose adoption would give clarity to prospective applicants and facilitate advanced planning to meet New Starts requirements.

Respectfully submitted,

Enterprise Community Partners  
Habitat for Humanity International  
Local Initiatives Support Corporation (LISC), and  
National Housing Conference

## About the Organizations Submitting the Comments

**Enterprise Community Partners (Enterprise).** Enterprise is a national nonprofit organization. Enterprise creates opportunity for low- and moderate-income people through affordable housing in diverse, thriving communities. Enterprise provides financing and expertise to community-based organizations for affordable housing development and other community revitalization activities throughout the U.S. In the past 30 years, Enterprise has invested over \$11 billion to create more than 300,000 affordable rental and for-sale homes to create vital communities and more than 410,000 jobs nationwide.

**Habitat for Humanity International** is a global nonprofit Christian housing organization that seeks to put God's love into action by bringing people together to build homes, communities and hope. Since 1976, Habitat has served more than 500,000 families by welcoming people of all races, religions and nationalities to construct, rehabilitate or preserve homes; by advocating for fair and just housing policies; and by providing training and access to resources to help families improve their shelter conditions. For more information, to donate or to volunteer, please visit [www.habitat.org](http://www.habitat.org), or follow us at [www.facebook.com/habitat](https://www.facebook.com/habitat) or at [www.twitter.com/habitat\\_org](https://www.twitter.com/habitat_org) or join Habitat's blog community at [www.habitat.org/blog](http://www.habitat.org/blog).

**Local Initiatives Support Corporation (LISC)** is a national non-profit community development organization that connects local organizations and community leaders with resources to revitalize neighborhoods and improve quality of life. LISC's comprehensive model—called ***Building Sustainable Communities***—seeks to offers neighborhoods a way forward by developing stability and promoting growth. It helps transform streets marked by chronic poverty and stagnation into good places to live, work, do business and raise families. Over the last 30 years, LISC has invested over \$11 billion to create nearly 300,000 affordable homes and apartments and over 45 million square feet of commercial and community space.

The **National Housing Conference (NHC)** represents a diverse membership of housing stakeholders including tenant advocates, mortgage bankers, non-profit and for-profit home builders, property managers, policy practitioners, realtors, equity investors, and more, all of whom share a commitment to a balanced national housing policy. Since 1931, NHC has been dedicated to ensuring safe, decent and affordable housing for all in America—that commitment bringing together our broad-based membership has earned us a reputation as the United Voice for Housing engaging in nonpartisan advocacy on housing issues.

## Appendix

### **Proposed Rating Factors for Measuring Whether Communities Have Policies in Place to “support maintenance of or increases to the share of affordable housing in the project corridor”**

This appendix outlines specific proposals for considering the role of affordable housing in candidate New Starts projects as part of the economic development criterion. The combined point total of the two proposed factors is 15 points. We offer these points as illustrations of the relative weight of the different factors within the affordable housing measure, rather than a statement regarding the relative weight of this whole category vis a vis other categories within the project justification.

#### **1. Affordability of New Residential Development Near Transit Stations**

**Overview:** This factor measures the commitment of the applicant to ensure that a minimum share of new residential development around proposed transit stations is affordable to moderate-income families and will remain affordable over the long-term.

**Ranking Factor:** Applicants must demonstrate they have a policy in place to ensure that a minimum specified share of new residential development within one-half mile of proposed transit stations will be affordable to renters with incomes at or below 60 percent of the Area Median Income or to owners with incomes at or below 100 percent of the Area Median Income. Such housing must qualify as long-term affordable housing, as defined below. In areas where rents are high relative to incomes, jurisdictions would receive credit for rental housing affordable to families with incomes up to 80 percent of the area median income.<sup>4</sup>

Points will be assigned based on the share of new residential units that the applicant agrees will be held as long-term affordable housing:

- a. 20% or higher (6 points)
- b. 15-19.9% (4 points)
- c. 10-14.9% (2 points)
- d. 5-9.9% (1 points)

Applicants must state their performance target in their application and describe the policies they have in place to ensure that outcome. Applicants’ policies may rely on any means reasonably likely to achieve the pledged outcome, including, but not limited to: using projected federal, state or local housing subsidies for development near proposed transit stations; using publicly owned land to develop affordable housing; requiring a share of proceeds from tax increment or tax assessment districts to be used for affordable housing near the proposed stations; adopting an inclusionary zoning policy with appropriate density or other offsets for property owners; providing density bonuses to owners that agree to include affordable units; adopting an employer-assisted housing policy; or using community land trusts or other shared equity homeownership mechanisms.

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<sup>4</sup> For station areas where the median gross rent of units within one-half mile of the proposed station exceeds 30 percent of the income of a household at 70 percent of the metro area median income, communities may receive credit for rental units affordable to families with incomes up to 80 percent of the metro area median income.

The applicant must agree to apply this policy to all residential development permitted within at least a 20-year period beginning on the date of approval of the New Starts application. Because land prices may escalate upon submission and approval of the New Starts application, however, jurisdictions are urged to start assembling land and putting policies in place even before they submit their New Starts applications; this will make it easier and less expensive to achieve the desired affordable housing goals. Jurisdictions are also urged to continue to operate these policies on a voluntary basis after the conclusion of the 20-year compliance period.

**Variation Among Proposed Transit Stations.** Applicants are not required to adopt the same housing policy or target for each proposed station. Where different affordability targets are pledged for different stations, the score for this ranking factor will be based on the average of the pledges, weighted based on the projected number of new housing units within one-half mile of each station within the 20-year period from the date of application.

**Exceptions for Areas with High Poverty Concentration and Low Housing Costs.** For a proposed station area with very low housing costs and very high poverty levels, additional investments in long-term affordable housing may not be warranted. Where rents, housing sale prices and poverty rates within a one-half mile of a proposed station all fall in the bottom quartile (i.e. very low rents and sale prices and very high poverty rates) of existing station areas in the metropolitan area, the applicant has the option of being excused from planning for additional affordable housing near that station and be awarded three (3) points for that station. Each station area will be considered separately and applicants wishing to score well under this ranking factor will still be expected to adopt policies for proportional affordability of new units near station areas that do not qualify for the exception. The final score under this ranking factor will be determined through the weighted average approach described above.

**Definitions:** For purposes of this ranking factor, **new residential development** includes both new construction and the substantial rehabilitation of existing stock.

**Long-term affordable housing** is affordable housing designed to remain affordable to and occupied by members of the target income group over the long-term, defined as follows:

- Rental Housing must meet one of the following tests:
  - owned by a nonprofit organization dedicated to providing affordable housing or
  - governed by a legally binding use restriction (or other legal protection) requiring the housing (or the land upon which it operates) to be used to provide affordable housing for 30 years or longer, as measured from the time the development goes into service.<sup>5</sup>

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<sup>5</sup> For purposes of qualifying new affordable rental housing, we have focused on use restrictions that last for at least 30 years from the time of the New Starts application –the standard required by the federal Low Income Housing Tax Credit (combining the minimum 15-year compliance period and 15-year extended use period), which is the primary federal vehicle for funding affordable rental housing. By contrast, for purposes of qualifying existing affordable rental housing under the land use criterion, we have focused on use restrictions that last for at least 15

- Owner-occupied housing must be governed by a legally binding covenant (or other legal protection) designed to:
  - ensure it remains affordable to and occupied by members of the target income group for at least 45 years and
  - ensure that, every time the property is sold or inherited during its affordability period, the clock is reset such that, from the date of sale or inheritance, the property will remain affordable to and occupied by members of the target income group for at least 45 years.

**2. Proposed Factor: Preservation of Existing Affordable Housing and Development of New Deeply Subsidized and Affordable Housing.** This proposed factor rewards New Starts applicants that have policies in place to preserve existing affordable housing and create new housing opportunities affordable to households with the lowest incomes. Points will be awarded as specified to applications that include the following elements:

- a. A comprehensive strategy to preserve the affordability of existing subsidized rental housing within one-half mile of proposed stations when current contracts expire for the longest-possible period and an identified funding source to carry out preservation activities (up to 3 points).
- b. A comprehensive strategy to preserve existing unsubsidized rental housing serving low-income households within one-half mile of proposed stations. Preservation may be accomplished by converting existing unsubsidized units within one-half mile of a New Starts/Small Starts-funded transit stop to long-term affordable housing or by replacing units whose affordability is lost with newly developed long-term affordable housing within the same station area. The applicant must provide evidence of an enacted policy or developer commitment (up to 3 points).
- c. A comprehensive strategy to (i) deploy existing or newly awarded rental subsidies to provide deeply subsidized rental housing<sup>6</sup> and/or to (ii) create deeply affordable owner-occupied housing within one-half mile of proposed stations (3 points).

As with the first ranking factor, a limited exception will be instituted for areas with high poverty concentration and low housing costs. Areas that meet the standard described in the prior ranking factor shall receive 3 points under this factor since they are unlikely to need additional deeply subsidized housing in the foreseeable future.

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years from the time of the New Starts application to account for the fact that the developments may have been built in different years, and thus have used up some of their required affordability periods.

<sup>6</sup> For example, a community could have a policy in place to promote the use of project-based vouchers within the station area; to purchase a portion of inclusionary units to be operated as scattered-site public housing; etc.

**Definitions: Subsidized rental housing** includes properties that are assisted or insured by HUD (excluding market-rate properties without any use or income restriction) or the Department of Agriculture, financed through the Low-Income Housing Tax Credit, the HOME Investment Partnerships program, the Community Development Block Grants program, tax-exempt bonds, or similar federal, state or local programs. Units with tenant-based rental assistance are counted only when the owners of those developments have contractually agreed to give a priority for admission to families with tenant-based rental assistance and agree to maintain that preference for at least twenty years.

**Unsubsidized rental housing serving low-income households** is defined as market-rate rental housing that costs no more than 30 percent of income for a household earning 60 percent of the area median income.

**Long-term affordable housing** has the same meaning as in the prior section.

**Deeply subsidized rental housing** is a subset of subsidized rental housing that includes only those units affordable to families with incomes at or below 30 percent of the area median income.

**Deeply affordable owner-occupied housing** refers to owner-occupied housing units that are affordable to families with incomes at or below 50 percent of the area-median income and meet the definition of long-term affordable housing (see above).