



April 14, 2023

Maggie Schilling
Office of Budget and Policy
Federal Transit Administration
1200 New Jersey Avenue, SE, Room E52-315
Washington, DC 20590

RE: Federal Transit Administration Notice of Proposed Asset Disposition Guidance and Request for Public Comments (Docket Number FTA-2022-0029)

Dear Ms. Schilling:

The Local Initiatives Support Corporation (LISC) is pleased to offer comments in response to the Federal Transit Administration's (FTA) Notice of Proposed Asset Disposition Guidance for affordable housing.

LISC is a national nonprofit housing and community development organization and certified community development financial institution dedicated to working with residents and partners to forge resilient and inclusive communities of opportunity across America – great places to live, work, visit, do business and raise families. LISC mobilizes corporate, government and philanthropic support to provide local community development organizations, nonprofits, and small businesses with loans, grants, and equity investments, as well as technical and management assistance. Our organization has a nationwide footprint with offices in 38 cities throughout the country, and a rural network encompassing over 130 partners serving 48 different states. In 2022, LISC and its affiliates raised and deployed over \$2.8 billion in grants, loans and equity capital into distressed urban and rural communities. Last year, this included over \$1.2 billion of equity capital deployed by our affiliates, the National Equity Fund and the New Markets Support Company, utilizing federal Low Income Housing Tax Credits (LIHTC) and New Markets Tax Credits, respectively.

Background

FTA is seeking comment on proposed guidance, published as frequently asked questions on FTA's website, regarding a new asset disposition option for FTA recipients. This guidance explains changes made to 49 U.S.C. 5334(h)(1) by the fiscal year 2022 National Defense Authorization Act (NDAA, Pub. L. 117-81). Section 6609 of the NDAA added a new disposition option for assets acquired with federal assistance that are no longer needed for the originally authorized purpose. Under the new provision, FTA may authorize the transfer of property to a local government authority, non-profit organization, or other third-party entity if, among other criteria enumerated in the law, it will be used for transit-oriented development and include affordable housing.

As FTA notes, this provision is unique in that it allows recipients to transfer assets to local governmental entities, non-profit organizations, or third-party entities with no further obligation to the federal government. First, however, FTA must concur that the following five statutory criteria are met, per 49 USC §5334(h)(1)(B)(i)-(iii):

- a. The asset is a necessary component of a proposed transit-oriented development project;
- b. The transit-oriented development project will increase transit ridership;
- c. At least 40 percent of the housing units offered in the transit-oriented development, including housing units owned by nongovernmental entities, are legally binding affordability restricted to tenants with incomes at or below 60 percent of the area median income and owners with incomes at or below 60 percent of the area median income, which shall include at least 20 percent of such housing units offered restricted to tenants with incomes at or below 30 percent of the area median income and owners with incomes at or below 30 percent of the area median income;
- d. The asset will remain in use for at least 30 years after the date the asset is transferred; and
- e. With respect to a transfer to a third-party entity,
 - I. a local government authority or nonprofit organization is unable to receive the property;
 - II. the overall benefit of allowing the transfer is greater than the interest of the government in liquidation and return of the financial interest of the government in the asset, after considering fair market value and other factors; and
 - III. the third party has demonstrated a satisfactory history of construction or operating an affordable housing development.

General Comments

LISC is pleased to offer the following comments.

- 1) Please clarify that transfer to a special purpose entity created by a nonprofit organization for the purpose of utilizing Low-Income Housing Tax Credits will be treated as a transfer to the nonprofit organization and not as a transfer to a third-party entity.***

Nonprofit developers typically form special purpose entities (typically limited liability companies, limited partnerships, or limited liability limited partnerships) in order to utilize the LIHTC under Internal Revenue Code Section 42. LIHTC encourages private parties to invest in affordable rental housing projects and is the most commonly used program for financing affordable rental housing. The nonprofit organization serves as the general partner or managing member of the special purpose entity. While the special purpose entity is technically a private entity, it is controlled and managed by the nonprofit housing developer.

LISC requests that FTA clarify that transfer of an asset to a nonprofit organization may include transfer to a special purpose entity formed by a nonprofit organization in order to utilize Housing Credits.

LISC believes that transfers to such special purpose entities should be treated as transfers to a nonprofit organization and not as transfers to a third-party entity because the statutory criterion for a third-party entity is harder to satisfy. In some cases, the special purpose entity may not be able to satisfy the criteria for third-party entities required by law. For example, 49 USC 5334(h)(1)(B)(v)(III) states that a third-party entity shall have “demonstrated a satisfactory history of constructing or operating an affordable housing development.” Because a new special purpose entity is created for each project, the entity itself will not have a track record of constructing or operating an affordable rental housing development. Instead, the nonprofit housing developer that created the entity is the party ultimately responsible for the successful construction and operation of the project.

- 2) Clarify affordability language around low-income owners.***

The FTA guidance notes that one of the statutory requirements to use this asset disposition procedure is that: “At least 40 percent of the housing units offered in the transit-oriented development, including housing units owned by nongovernmental entities, are legally binding affordability restricted to tenants with incomes at or below 60 percent of the area median income and owners with incomes at or below 60 percent of the area median income, which shall include at least 20 percent of such housing units offered

restricted to tenants with incomes at or below 30 percent of the area median income and owners with incomes at or below 30 percent of the area median income.”

LISC supports the inclusion of tenant income requirements since these assets will be utilized for affordable housing. Other affordable housing subsidy sources, such as LIHTC, impose similar requirements. We note though that the language includes owner income requirements, which is not necessary for affordable rental housing projects since they are required to serve low-income households. We recommend that FTA remove this language for affordable rental housing projects.

3) Allow state housing agencies to track affordability restrictions.

Transferred assets are required to remain use as affordable housing for at least 30 years after the date it's transferred. LISC supports these long-term affordability requirements and notes they are congruent with LIHTC financed developments (although some states impose longer affordability restrictions). We recommend that FTA allow long-term monitoring of this restriction to be performed by state housing finance agencies or other housing agencies with subsidies in the project which require long-term affordability, since these entities already conduct compliance monitoring activities.

We thank the FTA for the opportunity to offer suggestions. Please contact Mark Kudlowitz (mkudlowitz@lisc.org), LISC Senior Director of Policy, if you need additional clarification or follow up on any of the recommendations provided in this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Josephs", with a long, sweeping horizontal line extending to the right.

Matt Josephs
Senior Vice President for Policy