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GOVERNOR

STATE OF ARIZONA
DEPARTMENT OF HOUSING

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DIRECTOR

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September 5, 2008

Dear Friends,

I have received letters from many of you raising concerns about the Department's decision to reopen the 2008 LIHTC process and forward fund projects, rather than to proceed with a new 2009 round in March as anticipated. The basis of almost every comment was that it was unfair to eliminate the March 2009 round when so many entities had already set in motion the activities that would lead to a solid application in March.

While the Department will be issuing technical responses to the comments submitted, I want to share with you the untenable position the Department was put in that led to our decision. Soon after the 2008 allocations were announced the Department was named in a Superior Court lawsuit by a developer who did not receive an allocation. The suit focused on the fact that no state administrative rules have been developed to guide Department's allocation of tax credits.

Let me say here that the Department, either independently or as part of the Department of Commerce, has managed the LIHTC process for 20 years without formal state administrative rules, believing that the Federal Rules and the QAP provided a sufficient framework for a fair and transparent process. This approach has allowed us to be flexible and responsive to market demands over the years.

However, the suit sought a remedy which would have included writing and receiving approval of administrative rules, vacating the 2008 LIHTC announced allocations, re-reviewing all 2008 applications under the new rules, and making a new determination of allocations. We estimated that this process, if we were unsuccessful in our defense, could take as long as 18 months, leaving the 2008 winners in limbo and essentially delaying a 2009 round for as much as a year.

As a result of the lawsuit, the likelihood of a 2009 LIHTC round in March was minimal even if the Department successfully defended itself in court. Given that reality, the current difficult market conditions, and the changes brought about by HR3221, the Department weighed its options and determined that the most prudent approach was to ensure that projects that had already received allocations could be undergirded in this difficult market, and the changes required by the new law could be implemented in a timely manner.

However, even these actions could not proceed under the cloud of the lawsuit, given that the entire 2008 round could be overturned if our defense did not succeed. Therefore, in order to extricate the Department and the LIHTC program from this untenable situation and ensure that at least some projects were able to move forward in a timely manner, the Department negotiated a withdrawal of the lawsuit as a condition of reopening the 2008 round.

While reasonable people can disagree with our approach, our options were limited, and no option ensured a March 2009 LIHTC round. It is an unfortunate situation which may very well result in the Department creating administrative rules that will add another layer of bureaucracy to the allocation process in future years. The possibility also exists to explore a legislative remedy to provide relief from this type of disruption in the future.

I want to assure you our decision to proceed as outlined in August 15th Notice of Changes to the Qualified Action Plan was the result of a careful consideration of the limited options available to us, and with a full understanding of the problems the decision would cause those of you anticipating submitting a Tax Credit application in March. While it was a very difficult decision, under the circumstances I feel the Department chose the best approach in the interest of our development community partners and those in need of affordable rental housing who count on our joint efforts.

Sincerely,

A handwritten signature in black ink, appearing to read "Fred Karnas". The signature is written in a cursive, flowing style with a large initial "F".

Fred Karnas
Director