December 12, 2025

Joint Committee on Administrative Rules
700 Stratton Office Building
Springfield, Illinois 62706
jcar@ilga.gov

Re: Second Notice of "State Housing Appeals Board" regulations, 47 I.A.C. § 395.001, *et al*.

Dear members of the Joint Committee on Administrative Rules,

The undersigned organizations thank the Illinois Housing Development Authority ("IHDA") for considering our initial proposed amendments to regulations for the State Housing Appeal Board ("SHAB"), submitted on June 23, 2025. We are grateful for IHDA's adoption of many of our suggested changes, which we believe will go a long way towards strengthening the Affordable Housing Planning and Appeal Act ("AHPAA") and, subsequently, increasing the supply of fair and affordable housing statewide.

We are a broad coalition of organizations committed to affordable housing, with a collective interest in the success of AHPAA, which we believe to be a critical tool for ensuring a more equitable distribution of our state's scarce housing resources. Members of this coalition advocated for the creation of an Illinois builder's remedy back in 2003—efforts that culminated in the passage of AHPAA—and have been involved with multiple efforts to improve the law in the 22+ years since its creation. Unfortunately, the law has not been as impactful as hoped in creating affordable housing. We calculate that only 560 affordable homes have been built in Illinois' least affordable communities since enactment.[1] In a 2024 Real Deal article, even IHDA acknowledged that "There are no teeth in this legislation—there are no punitive measures."[2]

We believe the statute authorizes IHDA to provide more teeth than the proposed rules allow, and we urge the Joint Committee on Administrative Rules ("JCAR") to reconsider recommendations that IHDA declined to incorporate, particularly with regards to rulemaking authority and clarifying ambiguous statutory terms.

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[1] Martin Cozzola & Daniel Kay Hertz, *Building an Affordable Illinois: Achieving the Vision of the Affordable Housing Planning and Appeal Act*, IMPACT FOR EQUITY (Feb. 2025), https://impactforequity.org/report/building-an-affordable-illinois-achieving-the-vision-of-the-affordable-housing-planning-and-appeal-act/.
[2] Emma Whalen, *Toothless: Illinois path to builder's remedy prompts little affordable housing*, THE REAL DEAL (May 13, 2024), https://therealdeal.com/chicago/2024/05/13/how-illinois-version-of-builders-remedy-stays-suppressed/.

I. Rulemaking Authority

We recommend that IHDA rename Part 395, currently titled "State Housing Appeals Board," to "the Affordable Housing Planning and Appeal Act" and begin a separate rulemaking process for parts of the law that currently lack regulation. In its September 10 response, IHDA agreed with our reading of the statute giving IHDA broad rulemaking authority, but it nonetheless declined to exercise this authority beyond simply "stand[ing] up the SHAB."[3] For AHPAA to have more substantive impact on affordable housing in Illinois, we urge JCAR to direct IHDA to begin the rulemaking process on at least the following:

A. The creation of minimum planning requirements for, and evaluation of, Affordable Housing Plans

IHDA's September 10 response to our proposed amendments states that "The Authority believes AHPAA provides clear direction on [minimum requirements for housing plans] and any regulation it added would merely restate AHPAA."[4] Since our June 23 letter, Impact for Equity conducted a thorough analysis of Affordable Housing Plans submitted by non-exempt local governments ("NELGs").[5] The conclusions from that report make it clear municipalities do in fact need additional guidance. Of the 44 current NELGs, only 31 submitted Plans at all, and only 12 of the submitted Plans were deemed substantially compliant by IHDA.[6] The report, which is also included as an attachment to this letter, details the variety of ways NELGs appeared to interpret AHPAA's planning requirements as well as seeming inconsistencies in IHDA's application of compliance standards. Indeed, IHDA indicated in a recent article in the Chicago Sun-Times[7] that it is working with NELGs to help get their plans compliant. Providing this guidance within publicly available rules will avoid the need for multiple rounds of revisions after the submission deadline.

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[3] ILL. HOUS. DEV. AUTH., STATE HOUSING APPEALS BOARD – 47 ILL. ADM. CODE 395 – RESPONSE TO PUBLIC COMMENT ON STATE HOUSING APPEALS BOARD PROPOSED AMENDED REGULATIONS 2 (Sept. 10, 2025) (on file with "Impact for Equity") [hereinafter "IHDA Sept. 2025 Response to Public Comment"].

[4] *Id*.

[5] *See e.g.*, Suni Kartha et al., *Building an Affordable Illinois: Many High-Cost Suburbs Continue to Violate State Affordable Housing Law*, IMPACT FOR EQUITY (Nov. 2025), https://impactforequity.org/report/many-high-cost-suburbs-continue-to-violate-state-affordable-housing-law/.

[6] Note: these numbers, which includes Plans submitted after the June 14 deadline as well as re-submissions of initially non-compliant Plans, reflect information currently available on IHDA's website at https:///www.ihda.org/about-ihda/ahpaa/, while the report includes only those Plans that were publicly available through the website or FOIA requests as of the November 20, 2025 publication date.

[7] Lizzie Kane, *Many Chicago suburbs not meeting state's affordable housing requirements, report finds*, CHICAGO SUN-TIMES (Nov. 21, 2025), https://chicago.suntimes.com/real-estate/2025/11/21/chicago-suburbs-illinois-affordable-housing-requirements-impact-equity.

B. **Clarification regarding when IHDA will use its new power to refer NELGs to the Office of the Illinois Attorney General**

According to IHDA's website as of the date of this letter, 13 current NELGs have disregarded AHPAA's mandate to submit an Affordable Housing Plan to IHDA. The 2023 amendments to AHPAA permit IHDA to refer non-compliant NELGs to the state's Attorney General for potential enforcement and IHDA's 2023 NELG handbook states that "[NELGs] who fail to submit a plan or who submit a plan that was not prepared in good faith **should expect** [emphasis added] to be reported."[8] However, in the aforementioned Chicago Sun-Times article, IHDA confirmed that "[n]o communities have been referred to the attorney general, including those that missed the June deadline."[9] It is necessary for IHDA to provide clear standards for when it will use this new referral mechanism, both for the several NELGs that are repeat offenders in flouting AHPAA but also for NELGs who did submit (or even re-submit) Plans that are ultimately deemed non-compliant. Guidance for how IHDA applies "good faith" in this context, especially given the ambiguity about the planning requirements, is important for NELGs attempting to comply with the law and avoid referral.

II. Defining ambiguous statutory terms

We understand and agree with IHDA's desire to exercise deference to the SHAB with respect to the development of appropriate rules and procedures for parties before it. However, we disagree that more clearly defining statutory terms—or at least providing guideposts around how the SHAB can interpret them—undermines this deference. The SHAB, an important body created by AHPAA to act as an arm of IHDA in enforcing AHPAA, must operate within constraints and guidelines set by IHDA that will survive SHAB member turnover. As such, we ask that JCAR further amend the draft rules to provide clarity to appellants, NELGs, and the SHAB on the meaning of two important terms:

A. **Section 395.305 Initial Pleadings by Appellants ("final decision")**

We ask that IHDA provide clarity on what a "final action or decision" is that will allow an appellant to file an appeal with the SHAB. Although this phrase is not referenced in the text of AHPAA itself, Section 395.305 of the regulations states that appellants must file an appeal "within 45 days after the final action or decision of an approving authority to deny an application for an affordable housing development." Our initial comments proposed a non-exhaustive list of examples of what could be considered a "final action or decision," including language to address a situation where a municipality delays or otherwise fails to

[8] ILL. HOUS. DEV. AUTH. OFF. OF HOUS. COORDINATION SERVS., AFFORDABLE HOUSING PLANNING AND APPEAL ACT: 2023 NON-EXEMPT LOCAL GOVERNMENT HANDBOOK 27 (March 6, 2025), https://www.ihda.org/wp-content/uploads/2025/03/2023-AHPAA-NELG-Handbook_Rev-03-06-2025.pdf.
[9] Kane, *supra* note 7.

make a timely decision about a development. In its September 10 response, IHDA rejected our suggestions as opening the door for further ambiguity and stated its preference to defer to the SHAB on, "threshold issues on its jurisdiction to hear an appeal on the question of whether a final action or decision has been made."[10]

While we can understand IHDA's point on this matter, we reiterate our concern that the ambiguity of the phrase will discourage appellants from filing an appeal and, more problematically, will encourage a municipality acting in bad faith to repeatedly delay a final decision on an affordable housing proposal to run out the clock on a developer's patience and financing stack. Moreover, leaving the SHAB without any guideposts on what a "final action or decision" is could put the SHAB in the position of spending considerable time on whether a final decision has been made rather than on the underlying substance of the appeal. At a minimum, we ask that the rules be amended to state that repeated delays or inaction by a municipality on an affordable housing proposal for one year from submission is a "final action or decision" triggering the right to file an appeal with the SHAB.

B. **Section 395.314 Appellant's Burden of Proof ("geographic focus area")**

We ask that the meaning of "geographic focus area" be clarified for the sake of establishing which housing organizations can file an appeal and to minimize the need for SHAB to hear debate regarding appellant standing rather than addressing the substance of the underlying complaint. While we agree with IHDA that standing "is the predicate determination that any quasi-judicial body must make, and such determination cannot be averred,"[11] we believe IHDA can and should delineate the parameters within which SHAB will develop that jurisprudence. To align with AHPAA's existing direction to IHDA for calculating local government exempt status, as identified in Section 20 of the statute,[12] "geographic focus area" should be defined as the primary metropolitan statistical area of the NELG. The SHAB would retain authority to determine whether a housing organization's activities sufficiently take place within or impact this geographic focus area to establish standing.

[10] IHDA Sept. 2025 Response to Public Comment, *supra* note 3, at 3-4.
[11] *Id.* at 5.
[12] 310 ILCS § 67/20.

III. Conclusion

Thank you for your time and attention to our comments. We hope to see the regulations revised as recommended to strengthen and clarify this critically important law.

Sincerely,

Abundant Housing Illinois
Chicago Area Fair Housing Alliance (CAFHA)
Chicago Lawyers Committee for Civil Rights
Connections for the Homeless
CUrbanism Club
Housing Action Illinois
Housing Opportunities and Maintenance for the Elderly (H.O.M.E.)
HOPE Fair Housing Center
Illinois Housing Council
Impact for Equity
League of Women Voters of Illinois
Open Communities
Metropolitan Planning Council
NAMI Illinois
Rockford Area YIMBY
Supportive Housing Providers Association (SHPA)
YIMBY Law