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National Council of State Housing Agencies

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Via-email

Dear Jennifer:

The Affordable Housing Investors Council (AHIC) appreciates the opportunity to comment on the National Council of State Housing Agencies' (NCSHA) draft revised Recommended Practices in Housing Credit Administration.

AHIC's 325 members represent 55 corporations that invest in affordable housing properties through the low-income housing tax credit (LIHTC). They currently account for the bulk of the market and have invested more than $85 billion in all states and territories since the credit was established in 1986.

Our mission is to support the development of high quality affordable housing in the United States through investor education, development of best practices in underwriting and asset management, and fostering industry dialogue. Given our membership and mission, <u>we are keenly interested in working in collaboration with state housing agencies on ways to strengthen the credit as an efficient and effective tool for the development of affordable housing.</u>

Overall, we are impressed with the rigor and comprehensiveness of the revised Recommended Practices and commend your Task Force for its efforts. Below, we highlight areas where we particularly support your changes as advances for the field, as well as those instances where we propose further revisions or have concerns over the consequences of proposed practices.

- **Constructive New Recommendations**

AHIC particularly supports the new language in these sections for the clarity it brings and the manner in which it will strengthen the process for advancing housing credit developments.

  - *Section 3. Concerted Community Revitalization*
  - *Section 4. Local Approval and Support of Developments*
  - *Section 5. State Designated Basis Boost*
  - *Section 9. Development in High Opportunity Areas*
  - *Section 13. Green Building and Sustainable Developments*

- **AHIC Suggested Revisions**

    - *Section 7. Development and Management Experience.* Given the centrality of the capacity of the development team to the success of housing credit properties, AHIC proposes the following (new language in bold):
        1. Adding a reference to construction: "They should take into account the team's track record, financial capacity, and relevant experience in multi-family housing finance, development, management, resident services, **and, where applicable, serving as a contractor."**
        2. Strengthening the language around sponsors with no prior experience: "Agencies should **require** program sponsors with no Housing Credit experience **and limited multi-family development expertise** to partner or joint venture with a more experienced sponsor or developer."
        3. NCSHA should consider adding language encouraging agencies to <u>systematize conducting reference checks</u> with other state allocating organizations to ensure developers with poor track records in other states do not receive credit awards.

    - *Section 8. Market Analysis.* To promote positive practices in market studies, AHIC recommends that NCHSA encourage its members to:
        1. Require that market studies adhere to National Council of Housing Market Analysts standards
        2. Include a site visit as a component of the market study
        3. Establish a uniform methodology for determining capture rates and
        4. Institute a practice that market studies be no more than 6 months old.

    - *Section 12. Use of the Housing Credit for Supportive Housing*. AHIC members support the use of the housing credit to develop housing for individuals with special needs. To maximize investor interest in these developments, NCSHA could encourage its members to:
        1. <u>Adopt AHIC's Sample Operating Subsidy Loss Regulatory Relief Language</u> **(See attached).** This sample language outlines a process for preserving financial feasibility of a housing credit development in the event of the unexpected loss of public operating subsidies. It is designed to preserve affordable housing and protect important policy goals.
        2. Ensure the development team has relevant experience or an identified provider with the capacity to deliver appropriate services to residents.

    - *Section 14. Per Unit Cost Limits.* In addition to the existing recommended practice, AHIC encourages NCSHA to consider recommending that the agencies:
        1. Establish a clear policy around <u>working with developers to identify appropriate uses for cost savings</u> when they occur (e.g., application to paying down deferred developer fee; addition to the reserves; returned to soft money sources).

2. Explore instituting preferences for Guaranteed Maximum Price (GMAX) construction contracts (AIA Form 102) over Stipulated Sum contracts (AIA Form 101) because of the added transparency GMAX contracts provide, especially in the case of related-party contractors.
3. Request that developers identify practices that may result in higher costs, but bring added benefits to a project (e.g., use of 50 year roofs, concrete instead of asphalt parking lots, hardiplank or brick siding).

- *Section 15. Developer Fee and Builder Fee Limits.* AHIC is concerned that absolute caps on developer fees per unit or per project may have the potential for negative impacts on (a) developer sustainability; (b) the likelihood that individual smaller or larger developments, which may be desirable for community development or other strategic reasons, will be proposed; and/or (c) the developer talent pool, if more experienced developers with diverse multi-family practices leave the LIHTC industry

- *Section 17. Verification of Expenditures and Issuance of IRS Form 8609.* AHIC strongly supports the:
  1. Additional due diligence being proposed to ensure responsible developments. We recommend an even higher standard. "This additional due diligence **should** include audits of general contractors **and** sampling of subcontractor invoices to verify consistency with the developer cost certification**.**"
  2. Emphasis on timely issuance of 8609s.

- *Section 18. Sponsor Certification of Project Sources and uses of Funds.* AHIC supports the proposed amendment regarding additional certification and recommends that, in addition, developers be required to:
  1. Disclose any additional amounts being paid to them, or related entities, for syndication fees, debt placement fees, guaranty fees, etc. and
  2. Identify the purchase price of a site, and its allocated cost to the partnership, should they be different.

- *Section 19. Operating and Replacement Reserves.* The appropriate level of reserves is important to ensure the financial sustainability of a housing credit development over the 15-year compliance period. Some of AHIC's members could support the proposed amendment to the best practices to require that reserves remain with the development at the time of investor exit, contingent upon the reserves being replenished throughout the compliance period. Others believe that the disposition of the reserves is an integral part of the business decisions that developers and investors make in their partnership. They believe that the reserves should be able to be: (a) used by non-profit developers to further their affordable housing mission; (b) tapped to pay deferred developer fees; and/or (c) as an asset of the partnership, available to be considered for distribution during an exit negotiation.

- *Section 20. Operating Expense and Vacancy Rate Projections.* AHIC supports using underwriting criteria that capture the variations in local conditions as well as variations in risks associated with different project characteristics. We recommend the following additions in bold:
    1. "Agencies should underwrite Housing Credit developments using a vacancy rate projection based on local **historical and projected** market conditions **or other project-specific factors (e.g., 100% HAP subsidized building, high demand area, etc.)"**
    2. **Underwritten vacancies and operating expenses should also reflect the unique risk characteristics of a development, such as unrestricted ("market rate") units (or restricted units above 60% AMI), commercial income, or high levels of special needs / supportive housing units**."
    3. "Agencies **should** [not "may"] establish a range of vacancy rates instead of a single rate for certain markets experiencing volatility **or for projects that include the market rate, commercial and supportive housing risk factors noted above."**

- *Section 21. Debt and Expense Coverage.* Investors believe it is crucial to establish debt service coverage ratios for the 15-year compliance period at levels designed to ensure the long-term viability of a development.
    1. AHIC suggests the following addition to the recommended practice in bold: "**However, this minimum debt service coverage ratio should be evaluated against the underwritten vacancy and expenses, particularly for developments that include significant reliance on commercial income and/or market rate units (where higher debt service coverage may be needed to offset higher potential vacancy) or include significant numbers of supportive housing units (where higher initial debt service coverage may be required due to declines over time).**
    2. Regarding expense coverage ratios for developments with no hard debt, AHIC's Risk Rating Guidelines, which were revised this year, call for a 1.10 level for our highest rating of an "A". **(See attached.)** We would encourage NCSHA to adopt this minimum, which was developed in consultation with the syndicator community and which we believe is more appropriate.

- *Section 24. Appraisals in Acquisition/Rehabilitation Properties.* AHIC supports the revisions to this recommended practice and encourages an additional focus on the **reasonableness** of the allocation of value between land and buildings.

- *Section 27. Construction Monitoring.* AHIC supports additional monitoring of construction by Allocating Agencies. However, we suggest that NCSHA recommend that its members be added as intended users for the independent third party monitoring reports being provided to investors in order to save costs and avoid duplication of effort.

- *Section 29. Monitoring Property Restrictions.* To clarify requirements, AHIC recommends NCSHA consider instituting a best practice for the Agencies that all additional requirements of the tax credit award be embedded in the LURA.

- *Section 31. Foreclosure Prevention*. AHIC supports Agency efforts to identify "planned" foreclosures under which related parties default solely to avoid long-term use restrictions and the reporting of these abuses to the IRS. However, financial institutions that are both investors in and lenders to a housing credit development should not have their power to foreclose be subject to Allocating Agency approval.

Again, AHIC appreciates the opportunity to comment on the NCSHA Recommended Practices. If you wish to discuss the above further, please contact me at (347) 392-9983 or jhertzog@ahic.org.

Respectfully,
The Affordable Housing Investors Council

Julie

Julie H. Hertzog
Executive Director