NATIONAL HOUSING CONFERENCE

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August 9, 2017

Barbara Thompson
Executive Director
National Council of State Housing Agencies
444 North Capitol Street
Suite 438
Washington, DC 20001

Re: Draft recommended practices for Housing Credit administration

Dear Barbara,

The National Housing Conference (NHC) thanks you, your staff, the members of the National Council of State Housing Agencies (NCSHA), and all who worked on the updated "Recommended Practices in Housing Credit Administration." The self-directed improvement by state agencies has been an ongoing strength of the Housing Credit program. We are glad to see this continue, and we offer comments in furtherance of our shared goal of safe, decent and affordable housing for all.

Recommending best practices to more than 50 allocating agencies operating in widely varying jurisdictions is no easy matter. We recognize that NCSHA must choose best practices with a proven record of success in a variety of states while also urging states to learn from the experience of their peers. If recommendations merely describe policy already in place in most states, they provide only minimal benefit in advancing good governance of the program. Conversely, recommendations based on a single state's experience may not fit in others.

Updating the recommendations provides NCSHA an opportunity to strengthen oversight of the program to ensure that public funds for affordable housing achieve maximum public benefit. State agencies are best positioned to share strength with each other to proactively prevent problems that otherwise might arise.

Overall, NHC welcomes the new additions and improvements to the recommendations. In a few instances, we offer suggestions. We note strong endorsement of a few proposed changes as especially timely, but not to detract from our overall endorsement of this effort. Suggestions and endorsements are below, numbered to correspond to the recommendations in the NCSHA draft.

**1. Qualified Allocation Plans**
Consider making this helpful initial recommendation more specific as to what agencies should do to make their QAP clearly describe the allocation process and the properties most needed in the jurisdiction. For instance, publishing the QAP many months in advance of the allocation round gives developers time to secure appropriate sites to meet what the state desires. Furthermore, use of maps to identify which sites meet various criteria reduces uncertainty for applicants. The recommendation to engage stakeholders is appropriate but would be stronger if it identified ways to ensure that all stakeholders have an opportunity to comment constructively, beyond the bare minimum of notice and comment in one or two public forums. Focus groups, webinars, Q&A sessions with allocation staff, and outreach to underrepresented communities can all improve the process and thereby the ultimate allocation of Housing Credits.

**3. Concerted Community Revitalization Plans**
Allocating agencies should proactively define concerted community revitalization plans rather than wait for a definition from Treasury that will by its one-size-fits-all nature fit poorly many, or even most, places. More specific guidance would make this recommendation more effective by giving agencies a model to follow, pitfalls to avoid,

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and otherwise the benefit of experience by other agencies. If timing or format of these recommendations does not allow such detail, NCSHA should consider convening a task force of its members to develop more detail.

**4. Local Approval and Support of Developments**
This is an essential recommendation. Allocators should not allow NIMBY sentiment a veto over Housing Credit allocations while still encouraging localities to be constructive allies in affordable housing development. The recommended language strikes the right balance.

**9. Development in High Opportunity Areas**
This is a welcome and necessary recommendation to agencies which must work through the difficult balance of using limited resources to accomplish the twin goals of creating more opportunity where people already live and creating pathways to places of more opportunity for those who wish to move. The recommendation correctly notes this need to balance. Consider placing this adjacent to #3 on concerted community revitalization plans to further emphasize the related challenges.

**12. Use of the Housing Credit for Supportive Housing**
The encouragement to make allocations to supportive housing consistent with the Olmstead decision is valuable. This may be an area where NCSHA could convene a working group of members to develop more detailed guidance based on the experience of jurisdictions that have worked through compliance issues already. The discussion portion could benefit from identifying ways that Housing Credit allocation has integrated supportive housing as a portion of many or all allocations, beyond just strategies that use underwriting changes or set-asides for supportive housing developments.

**13. Green Building and Sustainable Development**
The recommendation correctly notes the necessary balance between encouraging energy efficient, healthier development and development costs. When done correctly, sustainable development lowers costs to the real estate over the long term. It can also produce non-real estate benefits to residents and communities: better health, open space amenities, less road traffic, and more resilience in the event of floods or other disasters. The recommendation should encourage agencies to recognize and address these other benefits when choosing allocation policies.

**14. Per Unit Cost Limits**
Keeping per unit costs manageable in the Housing Credit program is essential to ensuring affordable housing resources achieve maximum public benefit. We urge NCSHA to strengthen this recommendation by adding two points:

- Where “cost limits” are discussed, note that Agencies have been experimenting with and implementing incentive-based cost controls that may prove to be more effective than simple “cost limits,” and urge all Agencies to study and consider such policies.

- Agencies should evaluate their Qualified Action Plans and related policies and procedures to review threshold requirements, point-based incentives and other policies which may have the effect of encouraging higher development costs in an effort to be competitive in receiving an allocation. Such items may include but are not limited to project features, amenities, design specifications, siting priorities, etc. While such requirements are in service of worthy policy goals, and some of these items will result in lower lifecycle costs, they all add to up-front costs to one degree or another. The goal should be a balance of other worthy goals against the growing need for decent affordable housing.

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**15. Developer Fee and Builder Fee Limits**
Clarity around appropriate developer and builder fee limits is appropriate and helpful to agencies as a best practice, as they often face pressure to raise or even remove fee limits. NCSHA should consider additional language to caution agencies about unintended consequences of particular fee cap choices, such as a per-project cap directing developers to structure smaller and ultimately less efficient projects.

**16. Consultant and Professional Fees**
We support the recommendation to agencies for stronger oversight of consultant and professional fees. To further strengthen the recommendation, NCSHA should consider cautioning agencies about relying too heavily on historical figures for fee comparisons. As program regulations and market conditions change, the need for professional assistance may vary. Furthermore, if there is a history of high fees on projects, relying on historical comparables could inhibit a necessary right-sizing of fees.

**17. Verification of Expenditures and Issuance of IRS Form 8609**
NCSHA proposes amending this recommendation to call for additional cost certification due diligence for a random sampling of developments, but it should go further. We recommend that agencies should require additional cost certification due diligence for all developments. This additional due diligence should include audits of general contractors, including a sampling of subcontractor invoices to verify consistency with the developer cost certification. If the subcontractor is related to the general contractor and/or the developer, then all subcontractor invoices should be audited.

**18. Sponsor Certification of Project Sources and Uses of Funds**
NCSHA should clarify when in the process this certification is required, to minimize the need for repeated or amended filing due to small changes in actual costs.

**19. Operating and Replacement Reserves**
This is a timely and welcome recommendation. Property-level reserves are essential for long-term sustainability of affordable housing. The proposed amendment would help ensure that properties continue to provide high-quality homes in the extended use period and that public resources designated for affordable housing do not leak out during later transactions. Keeping reserves with the property is essential if agencies are truly underwriting for the life cycle of the property, which is much more than fifteen years. NCSHA should consider updating the $250 and $300 per unit per year recommendations, as these benchmarks have risen somewhat with inflation.

**23. Capital Needs Assessment**
NCSHA has done well to encourage capital needs assessments that take a long-term perspective on potentially beneficial and cost-saving improvements around energy efficiency, resource conservation, and accessibility. Consider strengthening the recommendation by suggesting a minimum period for the capital needs assessment, such as fifteen years (to match the compliance period). Short-term capital needs assessments, sometimes only five years ahead, can provide misleading assurance by ignoring long-term costs.

**25. Extended Use Agreements**
NCSHA should revisit this recommendation to encourage agencies to require extended use periods beyond the federal minimum of thirty years as long as the property can access resources for recapitalization, such as through refinancing or reserves. Requiring use restrictions without planned funds for capital repairs can be an empty promise leading to substandard housing, compliance failures, or unexpected application for new funds. NCSHA should also ensure that this recommendation is consistent with the new recommendation #31 Foreclosure Prevention. Use restrictions should run with the land to survive foreclosure.

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**31. Foreclosure Prevention**
We urge NCSHA to strengthen this recommendation. Given the response so far from the IRS, we conclude that simply reporting the findings of a planned foreclosure or deed-in-lieu to Treasury and requesting that Treasury prevent the termination, will have no effect. Agencies can and should do more. Furthermore, it is not clear what would happen if the owner refuses to provide the requested information, or where the owner does cooperate in providing information, what would happen once the information is reported to the IRS but the IRS does not act.

NCSHA should expand the recommendation to ask agencies to withhold consent for a termination of the extended use requirements if the owner does not provide all of the information requested. In the event information is provided that indicates the owner engaged in an arrangement to end the extended use, the agency should: a) not agree to a termination of the extended use agreement, and b) sanction the owner, and all related parties, for future participation in the program, either as an applicant for Housing Credits or as a purchaser from an existing owner where agency approval is required.

**34. Coordination of Monitoring Activities**
NCSHA's recommendation that agencies participate in the federal alignment effort is appropriate and welcome. It is the logical mechanism for coordinating.

**36. Monitoring Fees**
Consider clarifying that agencies can collect monitoring fees for both the initial compliance period and the extended use period. Agencies can and should monitor compliance, and fees are necessary to fund that work. Fees also remind owners of their obligations for extended affordable use.

**40. Continued Compliance in the Extended Use Period**
NCSHA is timely in urging agencies to clarify and improve their policies for the extended use period of Housing Credit properties. Since most properties are only underwritten for fifteen years, however, the extended use period requires agencies monitor both the compliance with use restrictions and the physical sustainability of the property. Agencies should pro-actively identify properties at risk either of physical failure or market conversion and act to preserve them as affordable housing. Agencies should also ensure staff, owners, managers, and residents are aware of ongoing affordability restrictions. Ongoing agency monitoring should be backed up by sanctions for noncompliance. NCSHA should consider convening a working group of agencies that have experience with long-term preservation of affordable housing to develop more detailed guidance and ongoing best practice development for enforcement issues.

**Conclusion**
NHC welcomes NCSHA's efforts to improve its recommended practices. For further discussion of any of our comments, please contact Ethan Handelman, Vice President for Policy and Advocacy, ehandelman@nhc.org, 202-466-2121 x238.

Sincerely,

Chris Estes

Chris Estes
President and CEO