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August 14, 2023

NCSHA Task Force on Recommended Practices in Housing Credit Administration
National Council of State Housing Agencies
444 North Capitol Street NW
Suite 438 Washington, DC 20001

Attention: Jim Tassos, jtassos@ncsha.org

Dear NCSHA Task Force Members and Staff:

Thank you for this opportunity to respond to the National Council of State Housing Agencies' (NCSHA) proposed updates to the Recommended Practices in the Low-Income Housing Tax Credit (Housing Credit) Administration. As a collaborative of twelve mission-driven, multi-state non-profit affordable housing developers, Stewards of Affordable Housing for the Future (SAHF) is grateful for the work NCSHA and its member housing finance agencies (Agencies) have undertaken in developing and updating these practices to not only address technical administration but advance a framework for a more equitable and effective use of the Housing Credit program. We greatly appreciate the advancements the Task Force and staff have made, most notably the inclusion of a new Recommended Practice on nonprofits' Right of First Refusal. Our comments and proposed edits below, organized by the Recommended Practices, are intended to support the intentions of the Task Force and further strengthen the existing Recommended Practices (RPs).

About SAHF

SAHF is a collaborative of twelve mission-driven, multi-state non-profit affordable housing developers – Mercy Housing, Volunteers of America, National Church Residences, National Housing Trust, Retirement Housing Foundation, Preservation of Affordable Housing, The NHP Foundation, BRIDGE Housing, CommonBond Communities, Community Housing Partners, Homes for America, and The Community Builders. SAHF members preserve and develop affordable multifamily homes that expand opportunity and create dignity for low-income persons with disabilities, the elderly, families, and the homeless. SAHF members partner with the National Affordable Housing Trust (NAHT) – an affiliate of SAHF – which is a nonprofit low-income housing tax credit syndicator. By efficiently and creatively leveraging private, public and philanthropic resources, SAHF members have developed or preserved more than 149,000 affordable rental homes across the county, over half (56 percent) of which were financed using the Low-Income Housing Tax Credit (Housing Credit).

The following comments and proposed edits for NCSHA's Recommended Practices are based on SAHF members' experience as sophisticated multistate developers in a dynamic Housing Credit environment.

Right of First Refusal (New RP)

SAHF strongly supports and appreciates the inclusion of the Nonprofit Right of First Refusal (ROFR) as a potential RP and urges NCSHA and its Board to include it in a final version of the RPs. Challenges to a nonprofit's ROFR are one of the most significant threats to the Housing Credit program, long-term affordability and mission-driven nonprofits seeking the well-being of residents. To date, twenty-one agencies have adopted language that strengthen nonprofits' ROFR but as challenges become increasingly familiar and as firms adopt challenges as part of their business model or operating procedures, this RP could standardize ROFR protections and lead to more widespread adoption.

Our comments are intended to further strengthen the RP through clarifications, alignment with other RPs, and some further context provided in the discussion section, and are still very much in line with the intent of the draft already approved by the Task Force.

- **Clarify that a bona fide offer can be <u>one option</u> to trigger a ROFR but <u>not the only option</u>**. The proposed language states "a requirement that partnership agreements include language clarifying that a ROFR cannot be conditioned upon receipt of a bona fide offer from any party, including a third party, and that the nonprofit or tenant collective organization has the authority to take action to trigger the ROFR and close on the sale of the property through the ROFR." We support the intent of this provision. Challenging the bona fide offer made to trigger the ROFR has been a tactic used to undermine ROFRs, so this clarification and the proposed language will provide important protections. We urge NCSHA to clarify that while a bona fide offer may not be required to trigger a ROFR, the parties may agree to receipt of a bona fide offer as a trigger for alternative pathways for triggering a ROFR. For example, the language adopted by Maine and New York City that provides bona fide offers as *one* vehicle may be more appropriate to convey triggers. That language specifically states that a "transfer of ownership may be triggered by *any of the following* (italics added by SAHF for emphasis):
    - subject to the consent of one or more limited partners of the owner (each, a "Limited Partner"), *which consent may not unreasonably be withheld, conditioned or delayed*, sell the project to the ROFR grantee in connection with the ROFR grantee's exercise of the ROFR;
    - at its discretion, without the consent of any Limited Partner, sell the project to the ROFR grantee in connection with the ROFR grantee's exercise of the ROFR following the General Partner's receipt of a bona fide third party offer to purchase the project; *or*

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    - offer the project for sale publicly at any time following the expiration of the tax credit compliance period and thereafter accept an offer from the highest bidder to purchase the project, as long as the sale price is not less than the minimum purchase price permissible under Section 42(i)(7)(B) of the Code, and provided such acceptance is subject to the ROFR grantee's rights to exercise the ROFR and purchase the project at the ROFR Purchase Price."
- **Consider staffing and processing time for new requirements:** SAHF supports the provisions regarding investor transfer policies that require agency approval and a letter of intent to vet investor eligibility. This is a means of oversight and ensuring long-term affordability. We would recommend that in the discussion section of the RP, NCSHA add that Agencies adopting such language consider the workload and staffing needs required for such approvals so as not cause delays in production.
- **Align with Operating Reserve RP:** In our August 2022 letter, SAHF recommended that, as part of a ROFR RP, NCSHA urge Agencies require that reserves stay with the property at the end of the compliance period. We appreciate that RP #19 already urges Agencies to adopt policies to ensure property reserves remain so that the owner can utilize them for preservation throughout the extended use period. We encourage NCSHA, in the ROFR RP, to urge Agencies to be consistent with RP #19 and require reserves to remain.

Housing Credit Tenant Protections (New RP)

SAHF strongly supports Agencies' pursuit of resident well-being in the Housing Credit program, including resident protections, and are pleased that NCSHA has incorporated this as a new RP. SAHF members prioritize resident-center management practices, and as part of the White House Resident-Centered Housing Challenge, and subject to state and local laws, committed to at least 30 days' notice to vacate for nonpayment of rent; at least 5 days to cure a missed rent payment; and 60 days' notice to tenants of any proposed sale or closure of a property. SAHF is supportive of robust notice requirements for residents, but also acknowledges that this commitment was possible not only due to SAHF members' commitments to housing stability but also because these notices align with our portfolio composition. In general, housing policy is highly localized, and operations and management practices are shaped by state *and* local laws and regulations.

- **Align RP with federal, state and local regulations:** While lengthy notifications to residents of rent increases and limitations on the number of rent increases may be laudable, this does not consider when there are multiple financing and regulatory frameworks at play that already have requirements in place and/or when new income limits are released that impact when and how rent can be adjusted. Notification periods of 90- to 120-days could cause significant administrative burden, confusion for residents and management staff if multiple notices are required, and further delayed rent increases that could impact property viability – especially when layering with Section 8 and other programs. A 60-day notice of rent increases should be feasible in most circumstances.

We suggest NCSHA include a provision that properties that are unable to align notice periods that provide more than 60 days' notice should not be disincentivized.

- **Consider more resident-centered language:** We encourage NCSHA to explore ways for Agencies to better recognize and incentivize projects that foster the voice and agency of residents, by engaging them in the design of services and operation of affordable housing. NCSHA should also consider incorporating recommendations for Agencies to incentivize resident-centered communications around rental agreements. While the lease, eligibility documents, and other orientation materials may be helpful in stipulating both resident and landlord responsibilities, they can also lead to information overload. Agencies should consider ways to encourage multifamily property owners to conduct written and verbal walk-throughs of all lease requirements, and encourage the use of a worksheet, one-pager, or summary document that residents can use to remember key terms of the lease.

Qualified Action Plans (RP #1)
While there is not a specific RP or change on resident services as proposed by SAHF, we appreciate the language in RP #1 regarding opportunities for the QAP to support social mobility, economic opportunity, and environmental sustainability, and clearly stipulating that **"in every case, Agencies should carefully assess the cost implications of their QAP policy decisions on upfront development costs and long-term operating costs of Housing Credit Properties".** In our August 2022 comments, we said that the RPs should encourage Agencies to consider how they can support a sustained source of funding for resident services, through underwriting criteria, increasing and capitalizing developer fee payments, or making soft loan funds available. Too often Agencies or other funding partners require or incentivize services but provide no funding or even flexibility to support them. We hope this updated RP will lead to greater adoption of these assessments.

Development and Management Experience (RP #7)
SAHF strongly supports advancing racial equity by incentivizing partnerships with community-based and BIPOC-led firms. SAHF members have a long history of partnership with BIPOC-led and emerging developer organizations. The new paragraph which details ways to encourage more diversity in development and management teams is a positive step forward, and we commend the Task Force for its inclusion. **We would further encourage NCSHA, as part of the RP discussion, to provide some context and best practices for these methods, including partnerships.** SAHF members have found that to better support partnerships between established developers and less well capitalized or less experienced developers, it's important for Agencies to adjust scoring in terms of the developer's experience and developer's financial capacity so that requirements for net worth and liquidity aren't applied to an organization that is not providing guarantees. Agencies should increase developer fees for BIPOC partnerships and consider splits to make partnerships equitable and recognize the risks

and expenses related to both development expertise and providing long term guarantees/risk exposure. Further, as some agencies limit the number of applications a given sponsor can submit or awards it can receive, Agencies should not count BIPOC partnerships toward this limit.

Promoting Choice and Opportunity for Housing Credit Residents (RP #9)
We strongly **support the inclusion and alignment of the statutory obligation of affirmatively furthering fair housing and the planning required** through current and pending regulation in this RP. SAHF and its members strongly support a balanced approach to fair housing—a concept that incorporates strategies to preserve existing affordable housing and reinvest in distressed or gentrifying neighborhoods, and strategies to support mobility and moving to high opportunity areas—as key to promoting choice and opportunity for residents. Neither production nor preservation alone can address housing disparities caused by decades of segregation, concentrations of poverty, the lack of affordable housing in well-resourced neighborhoods, the lack of community assets in high-poverty areas, and the loss of affordable housing to meet the needs of a community.

Sustainable Development (RP #13)
We appreciate the Task Forces' edit of this RP to reflect the increasing frequency of climate events and their impact on residents, construction, insurance and investor interest. "Natural disasters" may be overly narrow and not adequately account for climate events such as extreme heat. SAHF completed a portfolio-level climate risk assessment of if its members' 2,000 properties in several categories (flood, wind, fire and temperature) and extreme temperature (heat and cold) proved to be the most widespread risk. Standards like Passive House create a dwelling that can remain habitable at extreme temperatures for longer periods of time and can restore and maintain those temperatures more easily – putting less strain on generators or alternate power sources in the event of climate-related disruption. **NCSHA should consider amending this language to "natural hazards" to align with the FEMA National Risk Index, which includes extreme temperatures and other hazards (and is used in determining hazards in the HUD's Green and Resilient Retrofit Program) and/or providing examples in the discussion section that references issues such as extreme heat to be considered.** We also encourage NCSHA to include language that would urge agencies to adopt resilient approaches by aligning with other resources and flexibilities.

Extended Use Agreements (RP #25)
SAHF strongly supports the additions to RP 25, including requiring owners to notify the Agency of any transfer of ownership, qualified contract request, or right of first refusal activity; and requiring owners to notify tenants and the local government in which a property is located at least 12 months in advance of the expiration of a property's long-term use restrictions and consider appropriate enforcement mechanisms for this requirement. These requirements are an important tool to ensure preservation through better information and the ability to prioritize

resources as needed. **For clarity, we suggest NCSHA replace "right of first refusal activity" to "when a right of first refusal is exercised or challenged".**

Encouraging Preservation with the Credit (RP #26)
SAHF appreciates NCSHA's commitment to preservation with the credit, through this RP and beyond. The proposed language to "assess the physical and financial condition of existing Credit developments approaching the end of the affordability period at Year 30 to identify opportunities to extend affordability with targeted preservation strategies" is an important marker to the country about the challenges around Year 30 preservation. We strongly support this provision and urge Agencies to adopt this policy. The second addition to this RP: "consider whether it is appropriate to relax certain agency requirements in the use period as a strategy to facilitate preservation and continued affordability" is less clear and therefore **NCSHA should provide further context, including examples and best practices, in the discussion section**. Specifically, we would urge NCSHA to caution the importance of inspections to property affordability and viability and continue inspections if there are no other inspections required for that property.

Qualified Contracts (RP #27)
We support the continued inclusion of a recommended practice around qualified contracts in the Recommended Practices and encourage NCSHA to keep it in the final version. We are pleased to see the number of HFAs who have adopted policies to protect Housing Credit properties from exiting the program through qualified contracts grow, but as NCSHA's own data shows, units continue to be lost. The new language, which encourages Agencies to **"consider developing strategies and identifying financial tools to actively assist developers in the acquisition and preservation of projects that have submitted qualified contract requests"** has potential to stop this loophole from being exercised so often, and support developers in ensuring ongoing affordability.

Utility Allowances (RP 37)
SAHF was pleased to see this RP incorporates the energy consumption model utility allowance to provide flexibility for Housing Credit owners to utilize the optimal utility allowance for each development and to encourage utility allowances that accurately reflect anticipated utility consumption.

SAHF also supports the following edits that respond to cost implications in the Housing Credit program:

- Encourage Agencies to consider technological advancements in mapping and site review to create site visit efficiencies (RP #6). Improvements made in the past several years, and allowances provided during the pandemic to use such tools, have proven timeliness and other efficiencies while maintaining proper oversight.

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- Removing "same" when referring to bond and nonbond deals (RP 2, 14, 15). "Same" was not in previous versions of NCSHA's Recommended Practices. Agencies should ensure basic underwriting standards across all Housing Credit projects but should also have the flexibility to encourage and attract these additional resources and acknowledge that it may be appropriate to evaluate certain aspects of bond transactions differently.
- Agencies should regularly review their QAP and related allocation guidelines, along with multifamily construction and design guidelines, with the goal of reducing development costs (RP #14).
- Agencies should strive to issue Form 8609 in a timely manner, ideally within 90 days of receiving all complete required documentation.

Thank you again for the opportunity to provide feedback on the draft Recommended Practices and for your hard work to coordinate these updates. We look forward to working with NCSHA and the Agencies to uphold excellence in the administration of the Housing Credit Program. Please don't hesitate to contact me at aarnold@ncsha.org with any questions about our letter or recommendations therein.

Sincerely,

Althea Arnold
Senior Vice President, Policy
SAHF