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September 16, 2019

Ms. Judith Blackwell and Mr. Anthony Zeto
California Tax Credit Allocation Committee
915 Capitol Mall, Suite 485
Sacramento, CA 95814

Re: California Tax Credit Allocation Committee Proposed Regulation Changes

Ms. Blackwell and Mr. Zeto,

The National Housing and Rehabilitation Association (NH&RA) and our California Developers Council appreciate the opportunity to provide comments on the California Tax Credit Allocation Committee's (TCAC) proposed regulation changes.

Formed in 1971, NH&RA is a professional association of affordable housing and multifamily owners, private and non-profit developers and professionals. Many of our members are active owners and developers of LIHTC, HUD-assisted, USDA RD-515 and Public Housing Revitalization properties in California.

NH&RA recently formed our California Developers Council, which includes many of the largest affordable housing developers in the state. The group seeks to provide a unified voice for the development community on the most important state housing issues and to effectively and efficiently communicate concerns or feedback about state policies and legislation that directly impacts affordable housing development businesses in order to create more affordable housing options for low-income Californians.

Our comments are informed by our experience developing and operating affordable housing in California and around the country. We appreciate the efforts of the TCAC staff to modernize the regulations to better facilitate the production and preservation of affordable housing. As a whole, we support the proposed regulation changes and offer specific comments to further strengthen the regulations.

Proposed Regulation Change 5. Add authority to utilize the 130% basis increase with State Tax Credits allocated from the new \$500M. Section 10317(d)(3).

NH&RA and the California Developers Council support TCACs proposal to allow new construction applications for four percent federal credits and state credits located in a QCT or DDA to be able to request the 130 percent basis boost. Permitting four percent projects to leverage the basis boost will significantly increase the amount of federal tax credit equity available to bond projects making more projects financially viable and will result in increased production of affordable housing. This should also reduce the state credit requests in many cases, spreading that resource to additional projects. It should also be noted that projects located in DDAs and QCTs tend to have higher construction costs and/or lower rents, which is why the Congress specifically enacted the basis boost.



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Proposed Regulation Change 6. Remove requirement that 100% units be Tax Credit Units for 4% projects awarded State Tax Credits from original \$70M. Section 10317(g)(1).

We appreciate the recognition that only four percent plus state credit applications are required to have 100 percent of units designated as low-income. Research has consistently demonstrated the long-term benefits of mixed-income housing for low-income families and we support this change that will allow four percent credit developers to build mixed-income housing.^{1,2} This proposed regulation change will ensure that state and federal funds are only spent on the units designated as low-income, while increasing the supply of housing in California in pursuit of the state's goal of building 3.5 million new housing units by 2025

Proposed Regulation Change 11. Allow non-competitive 4% projects to provide the applicable rental subsidy commitment within 180 days after credit reservation. Section 10322(h)(22).

We support the proposal to allow for an additional 180 days to secure a subsidy commitment. This change will create a more streamlined process for that will allow financing and development tasks to proceed concurrently and should also allow developers to more easily secure soft-financing commitments and/or rental subsidies from outside sources including the U.S. Department of Housing and Urban Development whom wish to see a reservation or commitment of funds from TCAC or other agencies before committing their own funds.

Proposed Regulation Change 22 and 28. 22. Remove requirement for current financial statements for general partners and executed property management contracts for 9% projects. Section 10325(f)(6). 28. Remove requirement for current financial statements for general partners and an executed property management contract for 4% projects. Section 10326(g)(5).

We support this proposed change and appreciate the recognition that "the financial evaluation by a project's lenders and investors provides analogous or superior financial scrutiny." This should create a more efficient and timely application and underwriting process.

Proposed Regulation Change 29. Remove archaic dates for projects proposing Average Income Test and increase the average targeting from 59% to 60% for 4% projects. Section 10326(g)(9).

We support this proposed change. The removal of dates will ensure that this regulation remains evergreen -- dates can be set through annual LIHTC funding rounds. The increase of the average

¹ Chetty, R., Hendren, N. and Katz, L.F. (2016). *The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Experiment**. American Economic Review 106(4):855-902. Accessed from: opportunityinsights.org/wp-content/uploads/2018/03/mto_paper.pdf

² Levy, D.K., McDade, Z., Bertumen, K. (2013). *Mixed-Income Living: Anticipated and Realized Benefits for Low-Income Households*. Cityscape: A Journal of Policy Development and Research 15(2):15-28. U.S. Department of Housing and Urban Development. Accessed from: www.huduser.gov/portal/periodicals/cityscpe/vol15num2/article1.html



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targeting from 59 to 60 percent of area median income acknowledges that there is not an average income cliff. The minimum set aside test requires that 40 percent of units in an average income property must have an imputed income of 60, not 59, percent. The additional percentage points allows owners to claim the full benefit of average income. We also observe that tax credit syndicators and investors scrutinize income averaging plans and management capacity closely as part of their underwriting process and compliance processes and may be require additional cushions depending on the situation, which should give TCAC additional comfort in adopting this proposal.

Proposed Regulation Change 30. Clarify that the project's high-cost test factor may increase or decrease the Developer Fee at the placed in service stage and that the base fee limit may not be increased from the initial application. Section 10327(c)(2)(A).

Moving the nine percent credit developer fee high cost adjustment to the placed in service application rather than the initial application will reduce errors, save time and ultimately result in faster issuance of 8609s. We suggest that TCAC set up an online calculator to manage the requests from project owners and applicants to verify the developer fee adjustment calculation.

Proposed Regulation Change 31. Increase the amount of developer fee that may be included in eligible basis for 9% projects from \$1.4M to \$2M for rehabilitation or adaptive reuse projects or \$2.2M for new construction projects. Section 10327(c)(2)(A)(i)-(ii).

We support this proposed change. The increased amount of developer fee that can be included in eligible basis for nine percent credits from \$1.4 million to \$2 million for rehabilitation or adaptive reuse and \$1.4 million to \$2.2 million for new construction will facilitate more affordable housing development of affordable housing.

We encourage TCAC to reword this section to make it clear that 100 percent of the developer fee as set out in the limits in the QAP shall be eligible for inclusion in eligible basis.

Proposed Regulation Change 32. Remove developer fee requirements for projects receiving a waiver of the project size limitation. Section 10327(c)(2)(A)(iii).

NH&RA and the California Developers Council agree that this section is no longer relevant since developers will be able to claim the full developer fee for rehabilitation or adaptive reuse and new construction.

Proposed Regulation Change 33. Increase the base cash out developer fee for 4% projects from \$2.5M to \$3M. Section 10327(c)(2)(B)(i)-(ii).

We encourage TCAC to consider implementing the same or similar increases for four percent credits as nine percent credits. Proposed Regulation Change 31 increases the nine percent developer fee for rehabilitation or adaptive reuse projects by \$600,000 and for new construction projects by \$800,000, while Proposed Regulation 33 increases the four percent developer fee by \$500,000 for all types of



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construction. Four percent credits are subject to the same inflation as nine percent credits but unlike nine percent credits, incur significant fixed costs associated with trustees, bond counsel, underwriters and credit raters or enhancers.

We support this proposed increase for base cash out developer fee for four percent projects. Four percent projects incur additional and significant fixed costs associated with trustees, bond counsel, underwriters and credit raters or enhancers. Increasing the base cash out developer fee can help off-set these additional costs. We further encourage TCAC to consider implementing a base cash out fee based on a percentage, rather than a fixed dollar amount. For example, TCAC could implement a 25 percent developer fee and require that everything over 15 percent be deferred. A percentage-based cash out fee would better accommodate the increased scale and risk of large developments and remain evergreen amidst inflation. Increasing the developer fee for four percent transactions also increases the eligible basis in the project, which in turn generates additional tax credit equity at no cost of additional state resources, which will drive more development.

Proposed Regulation Change 34. Remove 39% limit for basis limit increases. Section 10327(c)(5)(A).

NH&RA and the California Developers Council agree with the removal of the 39 percent limit. Section 1038(c)(5)(A) offers up to 46 percentage points in increases to threshold basis limits. TCAC has deemed the criteria as both costly and important by making them eligible for increases.

Proposed Regulation Change 36. Remove parking requirements relating to basis for 9% projects. Section 10327(c)(10).

NH&RA and the California Developers Council support this proposed regulation change and believe that the reduced errors in calculating the reduced eligible basis from parking will speed up issuance of 8609s.

Proposed Regulation Change 37. Remove minimum and maximum flow requirements at the placed in service stage and clarified the elimination of the requirement was retroactive to placed in service packages already received by TCAC. Section 10327(g)(6).

This change will result in reduced errors, speed up issuance of 8609s and eliminate a duplicative and inaccurate underwriting requirement. We believe, as TCAC does, that the information gathering during the 15-year cash flow review at initial application and the 180/194 day application (when applicable) offer sufficient oversight and control.

Issues Not Included in the August 16, 2019 Proposed Regulation Changes 8609 Issuance

The rationale for Proposed Regulation Changes 30 and 36 both included “this results in a credit reduction and an appeal period that often runs concurrent with the credit award date” and Proposed Regulation Change 37 included “often during the placed in service application review, these limits are not met in the “pro forma” document submitted to TCAC, requiring corrections to hypothetical underwriting numbers and delaying the issuance of tax forms. For these reasons staff proposes to



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eliminate this requirement in the placed in service application.” We support all three of these changes and urge TCAC to consider what else it can do to speed up the issuance of 8609s.

Scoring of State Tax Credit Applications

We urge TCAC to adopt a system to rank applications in the event that more money is requested than available. TCAC should make this scoring system public, well before the October 15 release of the final regulations so that developers will have time to adjust for the November application deadline. We offer several proposed scoring systems for TCAC to consider:

1. Amount of state credits request divided by the number of low-income units, giving preference to those scoring the lowest.
2. Amount of state credits requested divided by the number of low-income bedrooms, giving preference to those scoring the lowest.
3. Amount of state credits requested divided by the possible amount of credits that could have been requested, giving preference to those scoring the lowest.
4. Smallest unit or bedroom type.

Once again, NH&RA and the California Developers Council appreciate the opportunity to provide TCAC with this feedback. We would be happy to discuss any specifics you might have regarding these comments or other subjects of concern. Please feel free to contact me directly with any questions at 202-939-1753.

Sincerely,

A handwritten signature in black ink, appearing to read "Thom Amdur", written in a cursive style.

Thom Amdur
President