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March 18, 2024

Anthony Zeto, Deputy Executive Director
California Tax Credit Allocation Committee
901 P Street
Sacramento, CA 95814

Via email: anthony.zeto@treasurer.ca.gov

RE: Comments on the February TCAC Regulation Change Proposals

Dear Anthony:

Thank you once again for the opportunity to comment on the proposed regulation changes. We are generally supportive but have the following comments:

**Section 10315(b): Clarify transfer of units within the Homeless assistance project eligibility**. We support this change. We are working on projects that are replacement housing for residents who qualified under the homeless definition at initial move-in in non-tax credit homeless housing created under the McKinney Act and Base Closure Community Redevelopment and Homeless Assistance Act and Base Realignment and Closure Process. The housing is obsolete and needs to be demolished and rebuilt. It is important that these residents continue to qualify for the Homeless Setaside in the replacement tax-credit housing they will occupy once it is constructed. We would like to see the language be more specific by adding the following after the first sentence, "The original determination of homeless status may derive from any relevant government agency or program, including the tax credit regulatory agreement, other government agencies' regulatory agreements, rental assistance programs, and case management programs."

**Section 10317(c): State Tax Credit Limit** We support this limit on enhanced state credits. State credits are a very valuable resource and providing a cap will better spread this resource to more projects. While the current tiebreaker provides an incentive to applicants to limit state credit ask, past results show that this has not been as effective for projects in high resource areas which get 120 points. A $200,000 cap will limit outliers, but we encourage a somewhat lower cap of $175,000 per unit to make this more meaningful. This is still much higher than the average award of $112,029 per unit made in the first round of 2023.

**Section 10322(h)(32), Section10325(f)(3) and Section10325(f)(8)(F), Conforming change for RHS, HOME, and CDBG-DR apportionment** We support this change. We note that in the HCD NOFA calendar, the CDBG-DR program is referred to as the 2020 Disaster Recovery Multi-Family Housing Program (MHP-DR). The regs should include this version of the CDBG-DR as well.

**Section 10327(c)(2)(B)(i) and (ii): Developer fee limit** We appreciate and support these changes. As we have commented previously, these limits are long overdue to be increased due

to increased staff costs and financial risk. That is particularly true for Permanent Supportive Housing projects which have longer development timelines, require more staff time throughout the organization and pose higher risks to developers. We appreciate the proposal to allow increased fees for PSH projects and encourage TCAC to increase this further on 9% projects from the proposed $2.8 million limit to $3 million to better reflect the additional costs and risks encountered in these projects. We also encourage TCAC to add an inflation escalator into the fixed dollar amount limits in this section.

**Section 10328(a)(4) and Section 10320(b)(1): Limiting rent increases** We understand and agree with the intent of this regulation to prevent unreasonably large rent increases at LIHTC properties that place undue hardship on already vulnerable low-income residents. Our concern with these provisions is that they add additional complexity to an already complex regulatory framework. As such, for these to be successful, they must 1) be clear and understandable with well understood definitions and processes; 2) not create undue administrative burden for owners; and 3) recognize and provide exceptions as needed for the complicated nature of the multiple regulatory requirements that apply in addition to the LIHTC rules.

Some specific comments to achieve these goals are:

***Applicability to transfers***: We suggest the language in Section 10320(b)(1) be clarified to make it clear that this applies only to any rent increases made since the new rent cap is adopted. As written it seems to apply to rent increases made up to five years back from the adoption date, which we understand is not the intention. We also suggest that ownership changes related to the withdrawal of the limited partner be excepted.

***Exceptions for Rental Subsidies****:* Provide exceptions to the cap for units/households with rental subsidy from a public agency. Under most rental subsidy programs, rent increases to the tenant portion of the rent are subject to the rules of that program and not within the owner's control. For example, increases in household income trigger increases to the tenant portion of the rent that could exceed the TCAC imposed rent cap.

***Exceptions for Loss of Rental Subsidy***: In addition, there needs to be an exception in the event of full or partial loss of rental subsidy. This is important both for project financial feasibility and in order to assure lenders that the tenant paid portion of the rent is allowed to float up on loss of subsidy. The ability to have float up provisions has been critical to our investors and lenders being comfortable in underwriting the subsidy contract revenue. It is important that this be clear in the regulations to ensure lenders continue to have confidence in the ability to mitigate rental subsidy loss. Subsidy loss on individual units can also have critical consequences to project cash flow that could put a property in default. It is important that residents not be disincentivized from participating in the subsidy program, as tenant rent with and without subsidy would be similar. Note that an individual unit that receives rental subsidy may be terminated, in whole or in part, for the noncompliance with recertification processes, moving in noncitizen household members (HUD program specific), not meeting program occupancy standards, etc. The termination is often not related to household income or under the control of the owner/landlord.

***Exceptions for Household Transfers**:* Another exception that needs to be clear is where there is a transfer of a household to another unit within the same property that has a different bedroom count or different AMI restriction imposed by a public regulatory/deed restriction.

This is important because most programs (e.g., HCD) requires that i) where a household exceeds a given AMI level, the household must transfer to the next available unit with a higher AMI restriction and ii) where a household is over or under occupied in a unit, as defined in the program occupancy standards, the household must transfer to the next available unit with the number of bedrooms necessary to fit within the program occupancy standards. Such transfers should be considered a "new lease" with the rent not reflecting a rent increase. The rent prior to the transfer should not used for the purposes of determining the new rent. There are two key reasons for this: a) there could be a dramatic drop in rental revenue of the property; and b) the timing of the transfer will not align with the 12-month rent increase cycle. Note that the exception of allowing increases up to 30% of actual household income would not solve this problem as these required transfers can result in rent burdens over 30% of income.

***Clarify cap is on a household, not the unit*:** Any cap should be applied to each household, as opposed to each unit. In other words, tenants should be protected during their occupancy, but upon vacancy an owner should be able to reset the rent consistent with TCAC rent limits. Note however, that household transfers to a new unit or required AMI tier is excepted as explained above.

***Clarity on the 30% of income standard***: We appreciate the allowance afforded in 10328(a)(4)(B) to raise rents up to 30% of the household income. In order to avoid any confusion, it would be helpful to make it clear that this provision only works in the direction of increasing the rent; that it does not also require a reduction in rent due to any change in a tenant's income.

***Clarity on Waiver Process:*** Having a waiver process is critical. We recommend that TCAC adopt more defined procedures and timing for requesting a waiver and for its approval. The more predictable this process is, the better owners and our funders can anticipate where the waiver might be approvable. The clearer the agency is in what an applicant can expect, then the more efficient this process can be for TCAC as well. Some details could include:

- What are the criteria for demonstrating a rent increase is "necessary to finance stability or fiscal integrity?"
- Would this waiver process be available to a property that is preparing for a substantial renovation?
- How much time should an applicant expect for receiving a decision on a waiver request?
- Is there an additional appeal process for any decision?

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Please let me know if I can answer any questions on these comments. Our SVP of Asset Management, Kyle Attenhofer, is also happy to speak with staff about the exceptions needed on the rent increase policy. As always, thank you for your work on the program.

Sincerely,

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