October 9, 2023

Taylor Koch
Interim Director of Multifamily Housing
Ohio Housing Finance Agency
2600 Corporate Exchange Drive, Suite 300
Columbus, OH 43231

Dear Mr. Koch,

The Ohio Housing Council (OHC) appreciates the continued willingness of the Ohio Housing Finance Agency (OHFA) to receive feedback as you develop the 2024-2025 9% Low Income Housing Tax Credit (LIHTC) Qualified Allocation Plan (QAP) and the first ever Ohio LHITC Guidelines. Ohio's 9% LIHTC program has a well-deserved national reputation for excellence because of the collaborative nature of the relationship between OHFA and the industry partners represented by OHC. We look forward to building upon the success of the 9% LIHTC program with this QAP and the addition of the recently-adopted Ohio LIHTC.

9% LIHTC QAP

We applaud the work you have put into revising the first draft of the 2024-25 QAP, and we are grateful for several of the changes you made between the first draft and the second. In particular, the adjustments to the developer fee and the 811 supported housing requirements are significant improvements. Given the substantial revisions to other elements of the QAP in this second draft, our Policy Committee met again to discuss our concerns and suggestions and, despite the diversity of the group and the many different perspectives represented in OHC, we offer these comments on areas where we have consensus:

1. **Basis Boost Language**. We were surprised to see changes to the Discretionary Basis Boost language between the first and second drafts, since the language in the first draft was identical to the language in the 2022-2023 QAP, and we believe that is the appropriate approach and superior policy. This basis boost is absolutely essential in most 9% development projects. Requiring the deferral or recontribution of 50% of the budgeted developer fee back into the permanent financing structure is unduly restrictive and will have an adverse impact on projects. In today's economic environment, it is important for all tools to be available for financial viability.

   OHFA already reviews the underwriting at three different times to make sure no more credit than necessary is awarded, which ensures that the discretionary basis boost requirements found in 26 U.S.C. §42(d)(5)(B)(v) are satisfied. OHFA also has a scoring category where the credit/unit is limited. We strongly urge OHFA to return to the discretionary boost language that was included in the first draft of the 2024-2025 QAP.

2. **811 Units.** We appreciate the change from the first draft to remove the requirement that at least 10% of units, or 5 units minimum, be set aside for 811 supported housing, and that 811 Project Rental Assistance (PRA) participation is not included in the scoring criteria for senior housing.

   We also understand that OHFA is using scoring criteria to incentivize the use of 811 PRA in family developments in order to meet the joint commitment OHFA has made to serve 232 households through a HUD grant. We do not oppose this conceptually, but we would ask that OHFA provide some flexibility in this criteria and work with developers to ensure that the 811 program is not the only item that triggers the prevailing wage requirements in a specific development.

3. **Related-Party Acquisitions.** Another surprise to OHC was the addition of the "Related-Party Acquisition" section in the second draft. We believed that this issue had been discussed and resolved last year when OHFA was developing the 2022-2023 Multifamily Underwriting Guidelines. We have attached the letter we originally sent in December of 2022 as it covers our concerns with this provision, and we hope OHFA will revert back to the previous, more flexible rules which allow OHFA to question developers during the underwriting process when necessary.

Ohio LIHTC Guidelines

One of the most significant developments in the effort to close the affordable housing gap in Ohio is the recent creation of the Ohio Low Income Housing Tax Credit (OLIHTC). There is no way to overstate the importance that this first year is a resounding success if Ohio is going to make good on Governor DeWine's commitment to make this state the best place to live and raise a family. We believe the guidelines OHFA adopts are critical to creating an environment in which this is the case. We look forward to working with you in this effort and continuing the conversation in future years about ways to adjust the guidelines as the program matures. To that end, we offer the following comments on the draft guidelines:

1. **Allocation Amount.** In this first year, OHC believes that it is important for several reasons to set both a relatively-high floor and ceiling on the amount per development. We would suggest setting the floor at $750,000 (annually) and the ceiling at $1.5 million (annually). We believe large credit awards are advantageous to Ohio for several reasons:

   a. <u>OHFA Capacity</u>: We are concerned that the recent departure of the Multifamily Housing Director and the Policy Manager has added even more strain to a staff that is already stretched thin. Reducing the number of projects that need to be underwritten/approved by having a smaller number of larger projects will help alleviate this burden.

b. <u>Attracting new investment in Ohio</u>: Setting a range as suggested will also ensure that we attract larger, new investment into Ohio for affordable housing. As you are aware, this was a point of emphasis for the legislature when they were considering creating this program, and we are concerned that this new investment will not occur unless the projects are appropriately sized. Informal discussions between OHC members and multiple state equity syndicators have reaffirmed that state equity syndicators are much more interested in large credit allocations.

c. <u>Unit Production</u>: The OLIHTC gained political support because of the promise of new units. Larger awards lead to larger projects with more units. Smaller projects are more inefficient by their very nature and the same number of credits spread over a larger number of small projects (versus 8-12 large projects) will inherently produce fewer units. In addition to helping meet the unit production goals of the legislature and administration, setting the range this way will maximize the efficiency of this resource as projects can take on more debt responsibly if the unit counts are larger.

d. <u>Inefficiency of Small Projects (high cost per unit)</u>: As stated above, small bond projects are more inefficient than large projects. This inefficiency reduces total unit production. In addition, inefficient use of proceeds will undoubtedly be a cause of concern to not only the industry but also the various elected officials involved with the formation of the program.

We recognize that this approach could disadvantage projects in some rural areas of Ohio, and we would be open to setting lower thresholds for projects in these communities.

Finally, we **strongly** recommend that the equity limitation in this draft be removed. **Awards should be capped based upon credit amount not equity pricing**. Owners are incentivized to negotiate the strongest equity pricing possible when awards are capped at a credit amount – capping awards based upon equity pricing removes this incentive and unfairly penalizes strong owners/sponsors. Capping awards based on equity limitations has led to irresponsible owners playing “games” with credit pricing. If OHFA is concerned about equitable equity pricing, we would be willing to discuss putting a credit pricing floor in for underwriting purposes.

2. **Selection Criteria**. OHC has several suggestions for revising the selection criteria laid out in the draft guidelines. **We are strongly opposed to using first come, first**

served as the criteria. Our preference would be that there be some sort of differentiator beyond a lottery, but even a lottery would be better than first come, first served.

We also believe that it is critical that an experience threshold is added for this first year of the credit. With a new, highly-scrutinized program, we must be sure that these allocations are successful and the best chance of that happening is with highly-experienced developers that understand how the (very complicated) tax-exempt bond program works. Our strong recommendation, therefore, is the addition of a threshold requirement that any applicant must have either:

- Closed at least one tax-exempt bond development in Ohio, or
- Closed at least two tax-exempt bond developments nationally **and** have received at least two 8609's in Ohio for 9% developments

We would also appreciate clarification as to when applicants will know they are in line for an award. The cost of preparing a final application is significant, so it is critical that applicants understand where they rank early in the process.

Applicable to All Programs

1. **Lien and Litigation**. As we discussed in our comments on the first draft of the 2024-25 LIHTC QAP, we recognize that OHFA intends to scrutinize the developer's capacity more closely at the time of application. We do not oppose that concept, but we continue to be concerned about undue burden and unintentional results. In order to strike a balance between the burden on both the OHFA staff and applicants and OHFA's desire to understand the potential for litigation, we would recommend allowing 90-day old reports rather than 30-day old reports.

   We encourage OHFA to show reasonable restraint when reviewing the capacity and experience of the development team. We have no issue with penalizing an applicant who is chronically late. However, we do not believe it is appropriate to eliminate someone who has missed one or two deadlines but has otherwise been a strong performer.

2. **Cost caps.** As we reviewed the second draft of the 9% LIHTC QAP, the first draft of the 4% LIHTC QAP, and the first draft of the Ohio LIHTC Guidelines, we noticed that the cost containment requirements are different for each program. We recommend these be consistent across the programs which would reduce the administrative burden on both OHFA and the applicants.

OHC is a statewide association of affordable housing professionals whose goal is to make a difference in Ohio's affordable housing industry. We advocate and educate on behalf of our members to increase the quality and supply of affordable housing in the State of Ohio.

As a diverse group representing many different interests, when we come together in consensus to speak on policy, we hope to deliver a powerful message.

We greatly appreciate OHFA's openness to stakeholder feedback. This longstanding characteristic is one of the remarkable reasons that the agency stands out ahead of so many of its peers. Thank you for your consideration.

Sincerely,

Matt Rule
President
Ohio Housing Council

Brian McGeady
Chairman
Ohio Housing Council Policy Committee

Enclosure

cc: Shawn Smith, Executive Director, Ohio Housing Finance Agency
Joe Hewitt, Senior Director of Housing Programs, Ohio Housing Finance Agency

ohio housing council

P.O. Box 12266

Columbus OH 43212

P: (614) 221-6567

F: (614) 488-8526

Shawn Smith
Ohio Housing Finance Agency
57 E. Main St.
Columbus, OH 43215

December 21, 2022

Dear Mr. Smith,

The Ohio Housing Council appreciates the opportunity to provide comments on the Ohio Housing Finance Agency's Draft 2022-2023 Multifamily Underwriting Guidelines. The Ohio Housing Council is a state-wide membership organization that represents various groups involved in the affordable housing industry, and we appreciate OHFA's long-standing relationship and history of collaboration.

While we have encouraged members of OHC to comment individually, we wanted to speak with one voice on a serious and problematic component of the draft guidelines regarding Related Party Transactions.

While we understand the Agency's desire to use its resources most efficiently and not over-subsidize developments, the proposed policy is too blunt of an instrument and makes it much more difficult for Developers to preserve existing affordable housing.
The best solution is to scale back the proposed guidelines but maintain OHFA's ability to review and question developments proposing cash out and deal with bad-faith efforts on a one-on-one basis.

Ohio has the third largest stock of federally assisted housing in the nation, behind only New York and California, and it has been a long-standing goal of OHFA to encourage the preservation of these existing assets. The current proposed guidelines ignore the reality of how much of this existing stock is currently structured. Many of these developments have a complex ownership structure with multiple limited partner interests. To be able to preserve these developments and do much needed rehabilitation, a new ownership structure needs to be created and the existing limited partners need to agree to sell the existing partnership. This sale generates exit taxes for the existing limited partners, a real expense and a real impediment to making these transactions work. The current sellers would not be able to cover their exit taxes with the new policy, and thus would be less likely to agree to a preservation strategy using Housing Credits.

Similarly, the proposed policy is out of step with the reality of how preservation deals work. When a developer acquires a deal for preservation, the award of credits and the commencement of rehabilitation does not immediately follow. A deal in need of preservation could have deferred maintenance and negative operations that need to be covered. The proposed policy discourages the developer from putting any money into the deal until after the award of Housing Credits. It is not in the tenants' best interest nor the State's best interest to allow a property to forego immediate capital needs or expenditures. The cost of waiting often leads to greater overall costs in the future, requiring greater future State dollars.

Carrying costs are real expenses, usually incurred by the Owners or related parties. To not allow the Owners to recoup these costs discourages them from pursuing a preservation path or from doing the right thing for the property and for the tenants by making the investment to carry the development along until the point when rehabilitation begins.

ohio housing council

P.O. Box 12266
Columbus OH 43212
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F: (614) 488-8526

Sometimes owners will defer management fees in order to keep the property cash-flowing until the point of rehabilitation and better cash flow The proposed policy discourages this short-term attempt to keep a property healthy by preventing the Owner from recovering these real but deferred expenses.

Finally, sometimes a new Owner will use their own money at the point of purchase of the asset, either as a down payment or as a source of debt. This can decrease the cost of financing and save the project money overall, but OHFA's policy would prohibit this.

In conclusion, OHFA's policy fails to recognize that there are several legitimate reasons that an Owner would be entitled to achieve cash out. By prohibiting cash out, OHFA is preventing many deals from pursuing a Housing Credit preservation strategy. OHFA surely does not want to make deals harder to do or to only see the easiest, less needy deals come into the competitive process. We recommend that OHFA remove the prohibitive language and insert language allowing the agency to question developers during the underwriting process for the rare egregious occurrences. Specifically, related party debt, deferred management fees, acquisition expenses, and other carrying costs should be permitted.

Finally, on an unrelated matter, OHC recommends that OHFA allow Developers to use either the local PHA/MHA utility allowances or the other methods permitted in OHFA's Utility Allowance Policy. The more accurate the Developer can get the utility allowances initially is the best path for the development, so if the Developer can obtain the alternate methods at proposal, those should be permitted (but not required).

Thank you for considering our comments. We greatly value our relationship with the Agency.

Sincerely,

Laura Swanson

Laura Swanson
Executive Director