August 11, 2017

Barbara Thompson
Executive Director
National Council of State Housing Agencies
444 North Capitol Street, NW
Suite 438
Washington, DC 20001
Via Email: jschwartz@ncsha.org

RE: Best Practices for Assessing Compliance for LIHTC

Dear Ms. Thompson:

We support the National Council of State Housing Agencies (NCSHA) in creating best practices for evaluating compliance to ensure that developments stay affordable during the full term of the initial compliance and extended use period.

The following comments are submitted on behalf of the National Housing Law Project (NHLP) and the Housing Justice Network (HJN). NHLP is a legal advocacy center focused on increasing, preserving, and improving affordable housing; expanding and enforcing rights of low-income tenants and homeowners; and increasing housing opportunities for protected classes. Our organization provides technical assistance and policy support on a range of housing issues to legal services and other advocates nationwide. In addition, NHLP hosts the national Housing Justice Network, a vast field network of over 1,000 community-level housing advocates and tenant leaders. HJN member organizations are committed to protecting affordable housing and housing rights for low-income families and individuals nationwide. We have a direct interest in maintaining the availability of quality affordable LIHTC-financed housing for our clients. This interest is consistent with the mission of HFAs to both finance the development of such quality affordable rental housing and to protect the public investment in such units by monitoring for compliance with all appropriate requirements.

This letter suggests specific areas in which we think NCSHA guidance would be particularly helpful. We propose new recommendations as well as comment on recommendations in NCSHA's draft.

NCSHA should include a new recommendation clarifying the limited circumstances that allow developments to prematurely end their income use restrictions.

HFAs can only allow developments to end their low-income use restrictions at tax credit developments for the specific reasons outlined in the Internal Revenue Code. The Code allows for a release of a development's affordability guidelines in two limited circumstances: foreclosure and qualified contract. HFAs may not expand this list of exceptions. However, HFAs allow developments to release use restriction for additional reasons outside of the IRS authority such as allowing for use restriction releases when properties are having significant unresolved compliance issues. Not only does this undermine the express purpose of the LIHTC program to provide affordable housing, but it is in violation of the Internal Revenue Code. NCSHA should add a recommendation prohibiting HFAs from releasing use restriction for anything other than the two statutory reasons.

Recommendation # 31 Foreclosure Prevention: NCSHA should modify the recommendations to include that Housing Finance Agencies take specific steps to reduce the likelihood of planned foreclosures.

We are encouraged to see that NCSHA included a new recommendation regarding Foreclosure Prevention and more specifically, an acknowledgement that planned foreclosures are a national concern. However, NCSHA should go beyond recommending that HFAs look into planned foreclosures and include recommendations on how to stop this disturbing trend.

As the housing market throughout the country has begun to rebound from the national housing crisis, we have started to see instances of "planned foreclosures," which are actions by partners in LIHTC developments that are designed to result in a foreclosure, or deed-in lieu, and thus contemporaneously wipe out the affordability restrictions on these properties. Since the Treasury Secretary has not yet acted to block such schemes or to provide guidance to HFAs (nor signaled any impending commitment to do so), HFAs should take steps to minimize the risk and likelihood of planned foreclosures and thus any future opportunities for lost units, as some states have already done.

These concerns are not theoretical. A recent lawsuit filed in the Western District of Michigan describes an entity that appears to have engaged in planned foreclosures in several states. *Complaint*, *Thompson v. Eenhoorn, LLC*, 1:17-cv-00021 (W.D. Mich. Jan. 6, 2017). Prior to the lawsuit, the Michigan State Housing Development Authority wrote to the IRS on September 19, 2016 outlining its concerns with the entity that is subject to the lawsuit.

Here are specific recommendations that NCSHA could make to HFAs to eliminate the practice:

1. *Limit the ability of developers that have engaged in planned foreclosures to obtain future credits*.

While we understand that HFAs have a right to enforce use restrictions, it has been our experience that many HFAs are unwilling to do so when informed of a planned foreclosure. It is our understanding that this lack of enforcement is usually due to a lack of staff and other resources. It is imperative that HFAs take affirmative steps to ensure that developers are not engaging in planned foreclosures. This will likely require an increase in fees or other revenue to the HFAs so that they can devote additional staff time to enforcing use agreements.

Pennsylvania has recently instituted a strong policy against planned foreclosures by putting in its proposed draft 2017 Qualified Allocation Plan the following: “The Agency may reject an Application from any Applicant (or related entity) who participates in a transaction or program to achieve early termination of a Restrictive Covenant Agreement as determined by the Agency in its sole discretion."

In the event that a HFA does not wish to completely disqualify a developer that has engaged in a planned foreclosure, the developer should be subject to additional monitoring fees and additional monitoring requirements in order to continue participating in the program. It is also important to consider penalizing bad actor developers with a loss of points in the application process if it has been found that they have engaged in a planned foreclosure.

2. *Provide limits on planned foreclosure in restrictive covenants or other long term use restriction instruments*.

In many states, the language of the restrictive covenants in use presents a risk that they are automatically terminated upon the execution of a deed-in-lieu. These self-executing restrictive covenants are extremely harmful.

An approach used by the Maryland Department of HCD appropriately seeks to interpose the agency as a barrier to self-execution, by permitting the agency, in its discretion, to block any automatic termination upon the agency’s determination that the foreclosure is pre-textual, as stated in the IRC:

<u>Termination Prior To Expiration of Extended Use Period</u>.

> “(a) This ELIHC shall terminate prior to the expiration of the Extended Use Period with respect to the Project or any Building upon the date the Project or such Building is acquired by foreclosure or deed in lieu of foreclosure; provided, however, this ELIHC shall continue in full force and effect if the Secretary of the Department determines that such acquisition by foreclosure or deed in lieu of foreclosure is part of an arrangement with the Owner, a purpose of which is to terminate this ELIHC.”
>
> “(b) Notwithstanding the foregoing, if any party acquiring the Project or a Building by foreclosure (or instrument in lieu of foreclosure) fails to record an agreement terminating this ELIHC and provide the Administration with written notice thereof, the Project or Building, as applicable, shall remain subject to this ELIHC, and the eligibility of such party to receive Tax

> Credits shall not be adversely affected, if such party continues to comply with Section 42 of the Code and the terms of this ELIHC."

In Ohio, OHFA recently revised its restrictive covenant by removing the self-executing nature of a foreclosure-related termination. The section now states:

> "Agency may terminate this RC prior to the end of the Restriction Period as a result of, and on the date that, the building(s) in the Project is (are) acquired by foreclosure or an instrument given in lieu of foreclosure as provided in Section 42(h)(6)(E)(i)(I) of the Code, unless the Internal Revenue Service determines that such acquisition is part of an arrangement with the Owner in which a purpose of such arrangement is the termination of the Extended Use Period."

Thus, we recommend that NCSHA include a recommendation that HFAs provide limits on planned foreclosure in restrictive covenants or other long term use restriction instruments.

3. *HFAs should encourage existing developments to execute and record amended restrictive covenants that include strengthened language*.

While amending current restrictive covenant forms should help for future developments, this alone will not have a remedial effect on developments that are currently in operation, unless the HFA has reserved the right to make these types of changes in the agreement itself or in HFA regulations. HFAs should offer incentives for developments to amend their current restrictive covenants, which could be in the form of points on future applications or reduction in fees.

Recommendation # 31 Developing in High Opportunity Areas-NCSHA should modify this recommendation to promote housing choice.

We are encouraged to see that NCSHA has included a new recommendation in support of encouraging development in high opportunity areas. It has been our experience that most tax credit developments are not in high opportunity areas due to a variety of factors including high costs and difficulty in securing local government support. We support HFAs developing policies to encourage this development by assigning additional tiebreaker points or even credit set asides specifically for development in high opportunity areas.

Encouraging development in high opportunity areas is also consistent with the Fair Housing Act and the federal mandate to affirmatively further fair housing (42 U.S.C. § 3601). In 2015, HUD released the "AFFH rule" which requires jurisdictions and public housing authorities (PHAs) across the country to use the AFH process to examine barriers to fair housing choice and access to opportunity within their jurisdictions/service areas and regions. Specifically, jurisdictions must look to a series of questions focused on fair housing issues including segregation/integration; racially and ethnically concentrated areas of poverty; disparities in access to opportunity; and disproportionate housing needs, and how these fair housing issues relate to individuals and families protected by the FHA. These assessments can serve as an important tool to guide decisions as to the allocation of tax credits to promote development in high opportunity areas and housing choice.

Promoting development in high opportunity areas, however, must be balanced with housing choice and investment in low-income communities. NCSHA, in its recommendations, must be careful not to tip the scale too far in the direction of development in areas of opportunity that typically have lower racial and ethnic minority concentrations. Emphasizing development in high opportunity areas could also have a negative impact on rural areas due to their disproportionate rates of poverty.

NCSHA should be clear in its recommendations that HFAs must balance development in high opportunity areas with reinvestment in distressed communities. This is an essential component to promoting housing choice in all communities.

Accordingly, we support encouraging development in distressed areas as part of "concerted community revitalization plans (CCRPs). However, criteria must be developed as to what should be included in a CCRP and the plans must address protections against displacement, loss of affordable units, and investing in existing distressed communities.

NCSHA should include a new recommendation that Housing Finance Agencies create substantive standards and procedural steps to evaluate requests for Qualified Contract purchases.

We are also seeing a problematic loss of affordable LIHTC developments through the Qualified Contract (QC) process outlined in the Internal Revenue Code. Through a public records request, we have learned of a significant number of units throughout Ohio that have been released prior to the end of their extended use period due primarily through the QC process. Other states have also experienced terminations under the QC process, unless they have required a waiver of this option by owners of LIHTC developments.

As we stated above, our clients' interest in accessing quality affordable housing is consistent with the HFAs' mission to develop such housing and protect the public's investment. To promote these goals, NCSHA should add the following additional recommendations:

1. Agencies should consider requiring applicants for a future allocation of credits to waive their QC rights, as permitted by the IRC and as is the current practice in at least some states. The QC process offers no countervailing public policy benefits that would justify the loss of affordable housing. The formula price established under IRS regulations often exceeds actual market value, thus presenting owners with an easy exit after the compliance period, since no rational buyer would overpay for the property.

2. HFAs should not simply accept any request by an owner to exit early based on the qualified contract process. Agencies should specify the information needed to evaluate the request, provide tenants notice of the request so that tenants have input, and then evaluate the request based on substantive standards. Furthermore, entities (and their affiliates) that seek the qualified contract process should be subject to a sanction on subsequent applications, which could be in the form of reduced points.

3. Qualified contracts should be executed as part of a public and transparent process. The tenants of the building and tenant advocates should be notified promptly of the process. This public process should allow for tenants and advocates to submit comments and have access to the developer's documents in requesting the qualified contract.

NCSHA should include a new recommendation that HFAs analyze data regarding early terminations, releases, and foreclosures to determine trends.

In addition to creating procedures to evaluate QCs and to combat unnecessary foreclosures, HFAs must review their internal data to detect trends regarding QCs and foreclosures. They should also determine if particular entities are taking advantage of the system. The data should not only inform their monitoring of current developments, but it should also inform their QAP process.

NCSHA should include a new recommendation that HFAs require that tenants receive notice when an owner anticipates a foreclosure or requests a qualified contract.

Tenants play a key role in preserving affordable housing and insuring compliance with the tax credit program. They can provide information to the HFAs who are assessing a qualified contract request or scrutinizing a foreclosure, and they can also take steps on their own, through the restrictive covenant to enforce rules against non-compliant owners.
As a result, HFAs should require developments applying for a qualified contract or who are anticipating foreclosure (e.g., as triggered by a notice of default) to notify tenants of these events. The cost of notice is minimal and the benefits for maintaining compliance are large.

Recommendation # 40- Continued Compliance in the Extended Use Period- NCSHA should modify this recommendation to consider options for enforcing compliance after the initial 15-year compliance period.

The tools that HFAs currently use for enforcing compliance after the initial 15-year period are often limited, relying primarily on the enforcement of recorded covenants – which necessarily requires litigation. States can create a broader set of tools, ones that can be more efficient and effective without requiring the cost and burden of a lawsuit.

Over the years, legal services attorneys have consistently reported problems in tax credit properties relating to illegal rent increases, violations of the over-income and next available unit rules, and improper admissions requirements. When those tenants are able to obtain an attorney, the attorneys have often reached out to the HFAs compliance officers. While that can sometimes help the situation, in other instances, the property manager still refuses to comply and the HFA has little recourse. Without an attorney, those tenants are left without any options.

We believe many HFAs would be served well by creating an informal complaint resolution process by which tenants can report non-compliance. This would ensure that HFAs are receiving the information they need to fully monitor compliance and would allow for the relatively speedy and efficient resolution of disputes. Further, states may authorize other enforcement mechanisms. For example, California authorizes the HFA to impose fines for noncompliance both during the compliance and the extended use periods. And, as noted above, the HFA could create a policy by which a project owner is docked points in future applications for noncompliance during the extended use period. These tools would go a long way toward improving the ability of the program to serve low-income residents.

NCSHA should include a new recommendation that HFAs require developments to include reference to the good cause standard in tenant leases.

In 2004, the IRS issued Revenue Ruling 2004-82 clarifying that the governing statute prohibits evictions without cause and that regulatory agreements between state tax credit allocators and owners must reflect that prohibition:

“The legislative history to § 42 states that the extended low-income housing commitment must prohibit the eviction or termination of tenancy (other than for good cause) of an existing tenant of a low-income unit or any increase in the gross rent inconsistent with the rent restrictions on the unit. H. Rep. No. 894, 101st Cong., 2d Sess. 10, 13 (1990).”

Good cause eviction protections are an essential foundation of maintaining tenant stability in LIHTC properties. However, this protection is rendered completely ineffective if tenants are unaware of their rights and in our experience. Indeed, a majority of LIHTC tenants are completely unaware of the good cause requirement. Additionally, Courts are often unaware of the good cause protection and may be reluctant to look past the lease to determine the rights of the parties.

In response to the need to educate tenants about the good cause protections, several states, including Ohio, Pennsylvania and California, have required LIHTC developments to include a lease addendum informing the tenant of their right to eviction only for “good cause.” Some states have incorporated references to other protections in their required lease addendums such as VAWA and the Fair Housing Act. Furthermore, the addendum serves to inform the tenant and other parties that the rental unit is in a LIHTC property. Lease addendums also serve to improve compliance as they inform both parties of their rights and responsibilities. This will serve to protect the rights or tenants and will also save the conserve the resources of developments and State Housing Finance Agencies.

Thus, NCSHA should adopt a new recommendation that Agencies should require developments to include a reference to good cause protections in tenant leases:

" Agencies should develop model lease addendums with the express purpose of informing tenants of the good cause eviction protections pursuant to IRS Revenue Ruling 2004-82 and should require developments to utilize the lease addendum with all current and prospective tenants."

NCSHA should include a new recommendation that HFAs take steps to ensure that developments comply with the Violence Against Women Act

It is vital that the recommended practices address the important protections provided by VAWA. The IRS has not yet issued guidance related to VAWA implementation. The failure of the IRS to issue guidance is not a barrier to NCHSA recommending best practices in this area.

Several organizations recently released *Protections Delayed: State Housing Finance Agency Compliance with the Violence Against Women Act.* The report includes a survey of housing financing agencies regarding their implementation of VAWA. The results indicate that many victims of domestic violence, dating violence, sexual violence, and stalking who reside in LIHTC properties are not receiving the full protection of VAWA 2013 and that the level of protection victims receive varies significantly from state-to-state.

The report identifies a number of practices that should be considered for inclusion in the recommended practices. These best practices include:

- Ensuring that the required VAWA notices be provided to all LIHTC tenants.
- Utilizing a lease addendum to inform tenants they are in a LIHTC unit and that they are protected by VAWA.
- Making clear to developments that a VAWA violation that leads to an eviction is a violation of the requirement for good cause eviction.

Several HFAs have already implemented many of these recommendations.

- At least eleven of the State HFAs (including Illinois, Delaware, Michigan, Missouri, Pennsylvania, and Wisconsin) have implemented measures to directly notify tenants, such as the use of a mandatory lease addendum; the development of a tenant guide to Section 42 and/or VAWA 2013; and/or the creation of other informational materials, such as posters or flyers. The Pennsylvania HFA requires that all developments utilize a lease addendum that includes a notification to tenants of their rights under VAWA.
- Indiana, Missouri, New Mexico, Wisconsin, and Wyoming monitor compliance with VAWA through auditor reviews and visits to the property to ensure compliance.
- Indiana also specifically reviews tenant selection plans and leases for any discriminatory language.

- New Jersey, Oregon, and Pennsylvania include VAWA compliance as a part of their yearly certificate of ongoing compliance.
- In Illinois, owners who are not in compliance with VAWA regulations and requirements are subject to negative scoring and/or a mandatory fail.

Accordingly, NCSHA should look to the best practices outlined above and adopt a new recommendation that all HFAs take steps to implement VAWA.

NCSHA should include a new recommendation that HFAs build incentives into their Qualified Allocation Plans for maintaining and even extending affordability

Many state HFAs have built-in incentives for maintaining and extending affordability into their Qualified Allocation Plans (QAPs). These incentives are consistent with the goal of the LIHTC program to provide sustainable affordable housing. HFAs should strongly consider including such incentives into QAPs to ensure lasting affordability.

As we discussed above, where an agency has not required waiver of QC rights for all applicants, we believe HFAs should carefully scrutinize QC requests. In addition to developing substantive and procedural guidelines for those requests, several HFAs have also taken steps to limit QC requests through their QAPs. For example, in Arizona's 2017 QAP, an applicant that waives its ability to request a QC will receive 10 points in the scoring. Iowa's QAP provides 25 points on its scale for a similar agreement. In Colorado, a developer can earn an increasing number of points on its application for the longer it agrees to waive its ability to request a QC. These are a few of many examples.

State HFAs have also used the QAP to extend affordability beyond the standard compliance and extended use period. For example, in Idaho, an applicant receives 15 points if it provides low-income use for 25 years after the initial 15-year compliance period, and as part of this, the applicant waives its right to request a QC until one year before the expiration of the full 40-year period. In Michigan's system, a developer can earn up to five additional points for agreeing to a longer affordability requirement (up to 45 years).

NCSHA should include a new recommendation that HFAs require clear and transparent tenant screening policies that comply with fair housing law.

Currently, LIHTC properties are not subject to any program-specific standards or regulations regarding the screening of tenants for admission. It has been our experience that many LIHTC owners and developers fail to develop tenant screening policies in writing and routinely reject applicants for inconsistent and often discriminatory reasons. One of the most common reason applicants are denied admission to LIHTC properties is due to prior involvement with the criminal justice system, regardless of how old, minor, or irrelevant the underlying offense may be.

One of the largest owners and operators of LIHTC housing, for example, has a policy of denying admission to anyone with a felony record at any time. This policy even applies littering and shoplifting, offenses that have a tenuous relationship at best with one's ability to fulfill her responsibilities as a tenant. Other problems include denying admission on the basis of arrests that never resulted in a conviction; imposing no time limits on the criminal history used; having overly broad exclusions, such as bans on all criminal activity; and not taking into account evidence showing that an applicant has turned her life around since leaving the criminal justice system. Making matters worse, most LIHTC properties are not required to give the prospective tenant a reason for denial. Not only does this lack of transparency lead to the denial of the tenant's rights but developments risk violating the fair housing act dur to discriminatory screening practices.

In 2016, HUD's Office of General Counsel, released a memo clarifying that admissions decisions based on the criminal history of an applicant that disparately impact protected classes, may violate the Fair Housing Act:

> "Where a policy or practice that restricts access to housing on the basis of criminal
>
> history has a disparate impact on individuals of a particular race, national origin, or other protected class, such policy or practice is unlawful under the Fair Housing Act if it is not necessary to serve a substantial, legitimate, nondiscriminatory interest of the housing provider, or if such interest could be served by another practice that has a less discriminatory effect."

The memo also clarifies that excluding applicants from housing for arrests (but not convictions) cannot satisfy the burden of a "substantial, legitimate, nondiscriminatory interest" because an arrest alone is not proof of unlawful conduct:

> " A housing provider who denies housing to persons on the basis of arrests not resulting in conviction cannot prove that the exclusion actually assists in protecting resident safety and/or property."

Therefore, NCSHA should make the following recommendations regarding tenant screening of LIHTC applicants:

"HFAs should require developments to have clear and transparent tenant screening policies that are consistent with the Fair Housing Act."

NCSHA should include a new recommendation that HFAs make clear that buildings supported by both LIHTC and HUD funding streams must apply the HUD definition of full-time students.

Increasingly, project-based Section 8 and rural development properties turn to LIHTC to preserve buildings as affordable housing. While both funding streams prohibit tenancy by certain full-time students, the HUD regulations and the IRS rules differ. This causes confusion to developers and can lead to qualifying students losing HUD-assisted housing. The best practice would be to adopt a single definition of students for developers to apply across funding streams; however, that would require legislative change. *See* National Affordable Housing Management Association, *A Business Case for a Single Student Occupancy Rule for All Affordable Housing Programs,* NAHMAnalysis (September 15, 2014), https://www.nahma.org/wpcontent/uploads/ 2014/06/NAHMA-Analysis-Business-Case-for-a-Single-Student-Occupancy-Rule.pdf.

In January 2015, HUD issued a memorandum to multi-family housing programs instructing that they should not evict tenants who meet HUD requirements, but not LIHTC requirements – and specifically referenced the student restrictions. Metcalf Memorandum, January 12, 2015. https://portal.hud.gov/hudportal/documents/huddoc?id= occupprotectionshudassthsg.pdf. We hear reports, however, that developers are still seeking to eviction students who qualify for HUD-assisted housing but do not meet the LITHC definition. Thus, NCSHA should adopt a guidance that makes clear that developers should not seek to evict students who remain qualified under the HUD definition, even if they do not qualify for LIHTC supported housing.

Recommendation # 39 Encouraging Fair Housing Compliance- NCSHA should amend this recommendation to address monitoring and other measures to ensure fair housing compliance and accessibility requirements.

HFAs should explicitly require tax credit recipients to comply with federal nondiscrimination standards for all protected classes, and each Allocating Agency should monitor tax credit recipients for compliance. HFAs should also adopt accessibility requirements including a minimum percentage of units accessible to people with mobility and sensory disabilities and related policies for those units, such as policies governing distribution of units, waiting list priorities, and development standards.

All government agencies are subject to the mandates of the Fair Housing Amendments Act (FHAA) of 1988 prohibiting discrimination against protected classes in the housing sales, rentals, and tenancy. *See* 42 U.S.C. § 3604 and 24 C.F.R §§ 100.5 and 100.202. HFAs must explicitly require tax credit recipients to comply with these nondiscrimination mandates and continue to monitor recipients for compliance.

The Americans with Disabilities Act (ADA) requires all public entities, including state and local governments and their departments, agencies, and instrumentalities to provide people with disabilities meaningful access to programs, services, and activities. *Crowder* v. *Kitagawa*, 81 F .3d 1480 (9th Cir. 1996). This meaningful access requirement applies across the board regardless of whether a particular program has direct federal funding. Like the ADA, Section 504 of the Rehabilitation Act

(Section 504) and HUD's implementing regulations at 24 C.F.R. Part 8 require meaningful access for people with disabilities in all operations of recipients of federal dollars. Section 504 and its implementing regulations include development standards to make housing accessible to people with disabilities.

While HFAs are not recipients of federal funds subject to Section 504 and its regulations, they are considered public agencies subject to the ADA. Compliance with Section 504 regulations would help Allocating Agencies comply with the nondiscrimination and meaningful access mandates of the FHAA and ADA. Moreover, tax credit recipients rely on multiple funding sources, many of which require the accessibility standards of Section 504. Consistency across funding sources is critical to helping projects qualify for necessary funding. Additionally, it is a best practice for HFAs to ensure that tax credit funded housing projects comply with Section 504 accessibility standards for people with mobility and sensory disabilities. Applying the model of the California allocating agency as well as Section 504 regulations at 24 C.F.R. Part 8 is the best way to accomplish that.

For example, the California Tax Credit Allocation Committee (CTCAC) has adopted, and in some cases, exceeded the Section 504 regulations. For example, Section 504 requires that covered projects build a minimum of five percent mobility accessible dwelling units and two percent sensory accessible dwelling units. 24 CFR 8.22. CTCAC, recognizing the great need for affordable accessible housing, has doubled those thresholds in its own regulations. California's Qualified Allocation Plan (CA QAP) Section 10325(f)(7)(K) available at: http://www.treasurer.ca.gov/ctcac/programreg/2017/20170517/clean.pdf. CTCAC has also adopted distribution Section 504's distribution requirements for accessible units (*See* 24 C.F.R. §§ 8.26 and CA QAP Section 10325(f)(7)(K), referencing § 8.26); affirmative advertising requirements and waiting list policies that prioritize people with disabilities for accessible units (*See* 24 CFR 8.27 and CA QAP Section 10337(b)(2)); and a policy requiring that tenants without disabilities living in accessible units move to non-accessible units when available (*See* 24 CFR 8.27 and CA QAP Section 10337(b)(2)). All Allocating Agencies should adopt these best practices in order to ensure tax credit projects provide meaningful access to people with disabilities.

In addition to adopting Section 504 requirements, all Allocating Agencies should require housing projects receiving tax credits to comply with federal accessibility standards, either the Uniform Federal Accessibility Standards (UFAS) standards, 24 C.F.R. §§ 8.20-8.22, or HUD's modified version of the 2010 ADA Standards for Accessible Design, HUD-2014-0042-0001, 79 F.R. 29671 (5/27/14). *See* https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-aba-standards/ufas and https://www.regulations.gov/document?D=HUD-2014-0042-0001. These standards ensure that projects with accessible dwelling units meet federal accessibility standards.

Accordingly, we suggest that HFAs:

- Implement monitoring and other measures to ensure that developments comply with federal nondiscrimination standards for all protected classes;
- Allocate ten percent of dwelling units in new construction and substantial rehabilitation multifamily housing projects be made accessible for people with mobility disabilities;
- Allocate four percent of dwelling units in new construction and substantial rehabilitation multifamily housing projects be made accessible for people with sensory disabilities;
- Ensure housing projects comply with either the Uniform Federal Accessibility Standards (UFAS) or HUD's 2014 Alternative Accessibility Standards (79 F.R. 29671);
- Ensure accessible dwelling units are distributed throughout projects and shall be available in a sufficient range of sizes and amenities;
- Ensure housing providers adopt policies and practices to affirmatively advertise accessible units to people who have disabilities requiring the available features;
- Ensure housing providers implement waiting list procedures that prioritize newly vacant accessible units first for existing tenants with disabilities, then for new applicants with disabilities before offering such units to anyone without disabilities requiring available features; and
- In instances where an accessible unit is offered to someone not requiring the features, owners should require the tenant to move to a non-accessible unit when available.

We greatly appreciate the opportunity to submit comments on this important matter. If you have additional questions, please contact Kara Brodfuehrer, NHLP Staff Attorney at: kbrodfuehrer@nhlp.org.

Sincerely,

National Housing Law Project

The Housing Justice Network

The Legal Aid Society of Southwest Ohio

Disability Rights California