PRESERVATION OF AFFORDABLE HOUSING

June 15, 2024

Larissa DeLisi, Esq
Savage Law Partners, LLP
564 South Water Street
Providence, RI 02903

Re: Proposed Rules and Regulations for Rhode Island Low-Income Housing Tax Credit program

Ms. DeLisi,

Thank you for the opportunity to submit comments on the Rhode Island Department of Housing's (DOH) proposed Rules and Regulations for the State Low-Income Housing Tax Credit (SLIHTC) program on behalf of Preservation of Affordable Housing (POAH).

POAH is a Boston-based, national nonprofit devoted to the preservation, development, and long-term stewardship of affordable housing. POAH has built or preserved more than 13,000 affordable rental homes nationwide, including over 1,000 affordable apartments across Rhode Island.

POAH commends the Rhode Island legislature for creating the SLIHTC, and we look forward to deploying the SLIHTC to create or preserve affordable housing in RI in the coming years. POAH has substantial experience with SLIHTC programs in Massachusetts, Missouri and Illinois, and our comments reflect that experience.

Alignment with Federal LIHTC Requirements

POAH would strongly urge DOH to align the SLIHTC regulations with the requirements of the federal LIHTC wherever possible. Because SLIHTC projects will, by definition, be subject to federal LIHTC requirements related to credit amount and over-subsidy, cost certification, recapture, and so on – those compliance structures can and should be relied on for SLIHTC as well. We encourage DOH not to set up new, redundant SLIHTC-specific compliance structures that would create new regulatory burdens for applicants (and program staff) without any corresponding public benefit.

"Financing Gap" / Tax Credit Amount

We understand and support DOH's intent not to over-subsidize projects. Because SLIHTC is being allocated only to federal LIHTC projects, POAH encourages DOH to rely on the protections against over-subsidization in IRC 42(m)(2), and not to develop a parallel set of tests which would be duplicative and might yield different outcomes.

If the DOH determines to implement a standalone assessment of the LIHTC amount in addition to the requirements of 42(m)(2), we would offer the following comments on the draft regulations:

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- Applicant equity, referenced in the definition of Financing Gap, is not typically a funding source in LIHTC projects, and the draft language appears to imply that it is required. POAH encourages DOH to omit this reference.
- Provision 1.7.A., which provides that the SLIHTC amount shall not exceed the financing gap, will ensure there is always a remaining gap because the SLIHTC must be monetized at a per-credit rate less than $1 (either through redemption at $.90 or by sale to a third party at a market determined discount rate). POAH would recommend instead that DOH provide that the SLIHTC amount shall be "no more than is necessary to make the project financially viable".

Tax Credit Agreement

1.11.A.10.c. states: *"If the actual project costs are less than the estimated project costs forming the basis for the approval of the awarded tax credits, then the awarded tax credit shall be reduced based upon the actual project costs."* Here, again, POAH would encourage DOH to rely on the federal LIHTC's protections against over-subsidy, which provide that the credit allocation will be reviewed as of the placed in service date (i.e., after actual costs are known) to ensure the amount of credits allocated is not more than financial feasibility requires.

Accordingly, POAH would recommend replacing this sentence with a provision to the effect that DOH may adjust the final credit amount to ensure that the tax credit is not more than required for project financial feasibility.

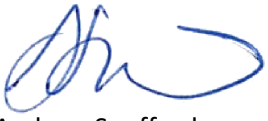
Eligibility Statement

At 1.12.A., POAH would recommend removing the reference to the applicant's equity contribution, as this is not a typical source in federal LIHTC transactions; as drafted this section could be read as requiring the applicant to contribute equity in order to be eligible for SLIHTC.

This section also appears to require the submission of a separate cost certification (in addition to the standard cost certification required for Federal LIHTC projects). We would urge DOH not to create a separate, redundant cost certification requirement for SLIHTC.

Thank you once again for the chance to share POAH's feedback on the proposed rules and regulations for Rhode Island State Low-Income Housing Tax Credit program. We deeply appreciate the Rhode Island Department of Housing's openness to our feedback as you develop and refine your priorities and policies and look forward to working more together in the coming years.

Sincerely,



Andrew Spofford
Senior Vice President
Preservation of Affordable Housing (POAH)